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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2022-000352

Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC; Terry A. Day; Betsy Kay Davis; Joshua D. Hornig; Eric J. Lentsch; David M. Neskey; and Anand K. Sharma,..... Defendants,

Of Which HCA Healthcare, Inc. and Trident Medical Center, LLC, are the ..... Respondents.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1005289

Medical University Of South Carolina et al
PLAINTIFF(S)

Hca Healthcare Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiffs Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina's Motion for Temporary Injunction was filed on November 22, 2021 and heard by this court on December 9, 2021. "A party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." Rawlinson Road Homeowners Ass'n, Inc. v. Jackson, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (2011). This Court finds that Plaintiffs Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina have not sufficiently demonstrated that irreparable harm would occur if the temporary injunction was not granted, nor that an inadequate remedy at law exists, therefore this Court respectfully DENIES Plaintiffs Motion for Temporary Injunction. Nothing in this Order shall affect the other claims in Plaintiffs' Complaint.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/15/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Dec 15 3:54 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption:	Medical University Of South Carolina , plaintiff, et al VS Hca Healthcare Inc , defendant, et al
Case Number:	2021CP1005289
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
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IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiffs' filed a Motion to Alter or Amend the Order Denying Plaintiffs' Motion for Temporary Injunction on December 28, 2021. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court hereby DENIES Plaintiffs' Motion to Alter or Amend the Order Denying Plaintiffs' Motion for Temporary Injunction without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/18/2022 .

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Court Reporter:

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Charleston Common Pleas

Case Caption:	Medical University Of South Carolina , plaintiff, et al VS Hca Healthcare Inc , defendant, et al
Case Number:	2021CP1005289
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1005289

Medical University Of South Carolina et al
PLAINTIFF(S)

Hca Healthcare Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiffs' Motion to Supersede prior orders denying Plaintiffs injunctive relief and to grant a temporary injunction during pendency of appeal, filed March 25, 2022, was heard by this Court on May 13, 2022. Based on the arguments of counsel during the hearing as well as those contained in the memoranda submitted, Plaintiff's Motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/29/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Jun 29 11:39 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

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Charleston Common Pleas

Case Caption:	Medical University Of South Carolina , plaintiff, et al VS Hca Healthcare Inc , defendant, et al
Case Number:	2021CP1005289
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2021 Nov 22 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,	)	
Plaintiffs,	)	Civil Action No. _____
v.	)	**COMPLAINT**
HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA,	)	**(Jury Trial Demanded)**
Defendants.	)	

The Plaintiffs, complaining of the Defendants, would respectfully show unto this Honorable Court that the Plaintiffs are entitled to awards of actual damages, punitive damages, statutory damages, costs, attorney's fees, prejudgment interest, permanent injunctive relief, and temporary injunctive relief against the Defendants under the causes of action set forth herein.

JURISDICTION AND VENUE

1. Plaintiff Medical University of South Carolina ("MUSC") is a state agency as described in S.C. Code Ann. § 59-123-10, *et seq*. Its principal place of business is in Charleston, South Carolina.

2. Plaintiff University Medical Associates of the Medical University of South Carolina ("UMA") is a South Carolina non-profit corporation organized exclusively for charitable purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986. Its principal place of business is in the Charleston, South Carolina area.

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3. Defendant HCA Healthcare, Inc. ("HCA") is a for-profit operator of healthcare facilities headquartered in Nashville, Tennessee. It owns and operates four (4) hospitals in South Carolina: Trident Medical Center ("Trident") located in North Charleston; Summerville Medical Center ("SMC") located in Summerville; Colleton Medical Center ("CMC") located in Walterboro; and Grand Strand Regional Medical Center ("Grand Strand") located in Myrtle Beach.

4. Trident Medical Center, LLC ("Trident"), is a Delaware LLC that is authorized to do business in South Carolina. Trident owns and operates a for-profit hospital that is wholly owned by wholly owned subsidiaries of HCA. Unless otherwise indicated herein, references herein to "HCA" include Trident Medical Center, LLC.

5. The remaining defendants are medical doctors, individual citizens of South Carolina, and residents of Charleston County, South Carolina ("the Physicians"). At all relevant times alleged herein, the Physicians were employees of MUSC and members of UMA.

6. This Court has jurisdiction over the parties and venue is proper in this Court because all parties are reside in, are located in, and do business in South Carolina, the defendants' misconduct occurred in or was directed at South Carolina, the harm to the plaintiffs was suffered in South Carolina, and the Physicians are residents of Charleston County.

THE PARTIES

A. MUSC and UMA

7. MUSC is a medical research university, and its mission includes the education and training of healthcare professionals (including physicians, nurses, and technicians), medical research, and providing comprehensive health care to the citizens of South Carolina.

8. UMA's purpose includes promoting and supporting the educational, medical, scientific and research mission of MUSC, delivering inpatient and outpatient professional services

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in furtherance of and for the benefit of MUSC, promoting superior patient care at all sites within MUSC, promoting the retention of superior faculty at MUSC, and promoting and aiding investigation and research by the faculty, staff and students of MUSC.

9. MUSC maintains a faculty staff of physicians in multiple specialties and discreet subspecialties who are engaged in research, clinical practice, and teaching at MUSC's College of Medicine.

10. MUSC employs faculty physicians to provide clinical care through UMA, its faculty practice plan through which MUSC provides the professional component of all patient care and billing functions.

11. All physicians employed by MUSC are paid, in part, through UMA and become voting Members of UMA upon employment as full-time faculty members.

12. MUSC's physicians provide hospital-based care in facilities owned and operated by the Medical University Hospital Authority ("MUHA"), including the Hollings Cancer Center and MUSC's Head and Neck Tumor Center (the "Tumor Center").

13. MUSC's Department of Otolaryngology includes a Division of Head and Neck Oncology ("HNO Division") that uses a multidisciplinary approach to provide optimal care for head and neck cancer patients with healthcare professionals from Head and Neck Surgery, Radiation Oncology, Medical Oncology, Maxillofacial Prosthodontics, Speech/Swallowing Therapy, Dental Oncology, Nutrition, Social Work, and related fields.

B. The Physicians

14. At all relevant times herein, the Physicians were faculty members and medical care providers in the Department of Otolaryngology and its HNO Division.

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15. Defendant Terry A. Day, also known as Terrence Anthony Day, M.D. ("Day"), began his career at MUSC in September 1999. At all relevant times, he was an MUSC employee and member of UMA serving as a surgeon, tenured professor, and Director of the HNO Division.

16. At all relevant times, Day was a Wendy & Keith Wellin Endowed Chair for Head & Neck Surgery at MUSC. His academic focus included tumors of the head and neck, transoral robotic surgery, skin cancer, thyroid cancer, and parotid tumors. He was also the vice chair and director of the Division of Head and Neck Oncologic Surgery in the Department of Otolaryngology – Head and Neck Surgery at MUSC, and director of the head and neck tumor center at the NCI-designated Hollings Cancer Center at MUSC. He also held a joint appointment in the Department of Craniofacial Biology, Department of Stomatology and College of Graduate Studies.

17. Defendant Betsy Kay Davis ("Davis"), D.M.D., began her career at MUSC in 1995. At all relevant times, she was an MUSC employee and member of UMA serving as a surgical dentist, a tenured professor, and the Director of the Division of Maxillofacial Prosthodontics in the HNO Division.

18. Day was an Endowed Chair in Maxillofacial Prosthodontics and Dental Oncology, as well as a Wendy and Keith Wellin Endowed Chair in Maxillofacial Prosthodontics and Dental Oncology at MUSC. Her academic focus was maxillofacial prosthetics and dental oncology, implant prosthodontics and esthetic dentistry. She was a professor of otolaryngology – head and neck surgery, and associate professor of oral & maxillofacial surgery. Her clinical expertise bridged the Colleges of Medicine and Dental Medicine into collaborative efforts in patient care, teaching and research, resulting in the integration of dentistry with multiple medical specialties including otolaryngology – head and neck surgery, plastic and reconstructive surgery,

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dermatology / dermatologic surgery, neurosurgery, radiation oncology, rehabilitative medicine, and psychiatry.

19. Defendant Joshua D. Hornig, M.D., began his career as an Assistant Professor at MUSC in July 2005. At all relevant times he was an MUSC employee and member of UMA serving as a surgeon and an Assistant Professor in the HNO Division.

20. Hornig also was the Chief of Head and Neck Oncology at the Ralph H. Johnson Department of Veterans Affairs Medical Center (the "VA Hospital"), which is the only veteran's facility in South Carolina that offers otolaryngology services. He also was an Associate Professor, College of Medicine, Department of Otolaryngology – Head and Neck Surgery. He specialized in head and neck oncology, facial plastic & reconstructive surgery, and head and neck tumors. He had an active role in instructing residents and mentoring the microvascular fellow in the latest reconstructive techniques.

21. Defendant David M. Neskey, M.D. ("Neskey") began his career at MUSC in July 2014. At all relevant times, he was an MUSC employee and member of UMA serving as a surgeon and an Assistant Professor in the HNO Division.

22. Neskey's clinical specialties included head and neck oncology, and head and neck tumors. He was the Fellowship Director for Fellowships in Head and Neck Oncology and Reconstructive Surgery in the Department of Otolaryngology – Head and Neck Surgery.

23. Defendant Erik J. Lentsch, also known as Eric Joseph Lentsch, M.D. ("Lentsch") began his career at MUSC in December 2006. At all relevant times, he was an MUSC employee and member of UMA serving as a surgeon and an Assistant Professor in the HNO Division.

24. Lentsch was a Professor, College of Medicine, Department of Otolaryngology – Head and Neck Surgery. His academic focus was head and neck oncology, thyroid and parathyroid

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surgery; melanoma/skin cancer and general otolaryngology. His clinical specialties include head and neck oncology, melanoma, skin cancer, and head and neck tumors.

25. Defendant Anand K. Sharma, ("Sharma") began his medical career at MUSC in June 2001. At all relevant times, he was an MUSC employee and member of UMA serving as a radiation oncologist and a Professor in MUSC's College of Medicine, Department of Radiation Oncology.

26. Sharma was a Wendy & Keith Wellin Distinguished Professor and an Endowed Chair in Radiation Oncology. He was an academic appointment in the Department of Otolaryngology, Head and Neck Surgery at MUSC. His primary academic and clinical focus was the treatment of head and neck cancer.

C. HCA and Trident

27. HCA is a for-profit corporation that owns and operates hospitals throughout the country.

28. Trident is a for-profit hospital located in North Charleston. It is a wholly owned subsidiary of HCA through other wholly owned subsidiaries of HCA.

THE HNO DIVISION MEDICAL PRACTICE

29. The defendant Physicians are part of the highly sophisticated and well-trained medical team that provides complete and total treatment for cancers located in the head and neck through the HNO Division.

30. MUSC has invested valuable time and resources in the education, training, and support of the Physicians and their respective medical careers.

31. MUSC has invested valuable time and resources in the development of an accredited and renowned head and neck oncology division that provides head and neck oncological

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surgical services including but not limited to the equipment, personnel, procedures, and know-how to provide such services.

32. The Physicians have been privy to proprietary and confidential information, including trade secrets, that belongs to MUSC and gives MUSC a competitive advantage in the marketplace.

33. All of the Physicians, working together with the resources and support provided by MUSC, comprise a very successful and valuable practice.

34. In July and August 2021, all of the Physicians gave notice that they were resigning their positions with MUSC and UMA effective December 1, 2021, with November 30, 2021, being their last day of work.

35. Upon information and belief, all of the Physicians have entered employment contracts with HCA or one of its wholly owned subsidiaries and will begin working at HCA's Trident hospital on or about December 1, 2021.

THE HNO FELLOWSHIP PROGRAM

36. Each year the HNO Division sponsors two positions for post-graduates to participate in a clinical Fellowship in Head and Neck Oncology and Microvascular Reconstructive Surgery ("HNO Fellowship").

37. The HNO Fellowship is one of only 50 fellowship programs in the United States accredited by the Advanced Training Council for Approval of Advanced Training in Head and Neck Oncologic Surgery, which is the largest organization in North America for the advancement of research and education in head and neck oncology.

38. MUSC's HNO Fellowship Program has maintained continuous accreditation since 2010.

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39. The HNO Fellowship gives fellows the opportunity to participate in 70 to 160 cases of microvascular free tissue transfer for head and neck reconstruction. Fellows also have the opportunity to perform surgical procedures with surgeons from other specialties, including Facial Plastics, Dermatologic Surgery, Oral and Maxillofacial Surgery, Ophthalmology, Thoracic Surgery, and Vascular Surgery. At all relevant times, Defendant Neskey was the Director of the HNO Fellowship Program, and the other Defendant Physicians were members of the HNO Fellowship Faculty.

40. The HNO Fellowship Program is accredited by the Advanced Training Council for Approval of Advanced Training in Head and Neck Oncologic Surgery ("ATC"). The ATC supervises the specialized training of physicians preparing to assume leadership roles in the management of head and neck disease with a focus on neoplasms. The fundamental components of an accredited fellowship program include the following:

a. Direct participation in the evaluation, management, and care of at least 200 patients with head and neck "Neoplastic" lesions, including consultations that focus on either the oncologic or reconstructive care.

b. Participation in the longitudinal care of such patients (evaluation, interdisciplinary management, follow-up).

c. Direct participation in a minimum of 100 major surgical procedures within head and neck surgical oncology (including free flap reconstruction).

d. Intensive exposure in interdisciplinary management of head and neck oncologic patients **throughout the entire year** (including tumor board interdisciplinary planning conferences).

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41. The ATC further requires ongoing institutional support of faculty, facilities, and resources to an accredited fellowship program, including state-of-the-art facilities to foster the interdisciplinary environment and patient care that are hallmarks of the program and which MUSC has provided for decades. On information and belief, Defendant HCA's facility at Trident Medical Center lacks such institutional resources.

42. The departures of Day and the other Physicians have substantially endangered the ability of the Fellows to complete the HNO Fellowships.

43. On information and belief, Defendant Day and the other Physicians recruited fellows for the HNO Fellowship for the 2021-22 academic year under false pretenses, including a failure to disclose their intent to leave MUSC and not complete their obligations and commitments to supervise and train those fellows, thereby fraudulently inducing those Fellows to commit and entrust their fellowship training to MUSC, and move to Charleston with the understanding and expectation and in reliance upon representations by Day and the other Physicians that they would receive the benefit of the individual defendants' supervision and training during the 2021-22 academic year.

44. Upon information and belief, the "matches" to other fellowships throughout the country for next academic year already have been filled, effectively barring the Fellows from attempting to resume their fellowship in other locations for over 18 months.

45. Immediately after submitting his notice of resignation to MUSC, Defendant Neskey, while still holding the title of HNO Fellowship Program Director, took affirmative steps to intentionally harm the HNO Fellowship Program, including the following:

a. Defendant Neskey, without notifying anyone else at MUSC, directly contacted the AHNS ATC to advise them of the planned departures of Defendant Physicians. In response, on

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September 4, 2021, the AHNS Co-Chairs, Doctors Don Weed and Amy Hessel, sent an email to Defendant Neskey advising that "[g]iven the significance of these changes the ATC will need to determine whether or not the [HNO] Fellowship will have sufficient educational resources to maintain its certification" and further requesting specific information to be considered by the ATC.

b. Defendant Neskey did not notify anyone at MUSC of this correspondence. Instead, he prepared a written statement to the ATC responding to the specific questions posed in the September 4, 2021 email. Defendant Neskey sent this written statement, in Microsoft Word format, to Doctors Weed and Hessel on September 12, 2021. The Word document reflected "track change" revisions and comments that appear to have been made by one of Defendant Physicians' attorneys. Notably Defendant Neskey apparently intended to include the following, which his attorney proposed to delete, likely because of how clearly damaging the statement was to the HNO Fellowship Program certification:

> "Regarding the possibility of the fellows continuing with their MUSC fellowship, [defendant] Day and I have several concerns. First and most obvious is the volume of cases to support two fellows will obviously not be present therefore their training would be significantly impacted. Secondly, without any extirpative surgeons on faculty and only one AHNS surgeon, the current fellows may function as junior head and neck faculty for new and existing head and neck cancer patients. This second scenario is our greatest concern since it negatively impacts not only their training but more importantly but also the care of head and neck cancer patients in South Carolina."

c. On or before September 8, 2021, Defendant Neskey requested Defendant Day's administrative assistant to forward him a copy of the ATC Accreditation Package for the HNO Fellowship that was completed in October 2019, a 46-page document containing all of the detailed

ELECTRONICALLY FILED - 2021 Nov 22 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

information needed for MUSC to obtain its ATC Accreditation of the HNO Fellowship. Subsequently, on or before September 13, 2021, Defendant Neskey requested the AHNS Associate Executive Director to forward a blank AHNS Fellowship Program application, reflecting Defendant Neskey's intent to use the MUSC 2019 detailed packet to support an application for a new accredited fellowship program to be established at Defendant HCA's facilities.

46. Upon information and belief, the defendants have solicited the current and future Fellows of the HNO Fellowship Program to leave the Program, all to the injury of MUSC, UMA, the HNO Divison, and the HNO Fellowship Program.

47. The conduct of all Defendants has resulted in substantial damage and disruption to MUSC and the residents and fellows of the HNO Division, and was designed to put MUSC out of the business of treating head and neck cancer patients (as well as the training of residents/fellows and research related thereto), and has caused MUSC and UMA to suffer substantial damages, including lost revenues.

MISAPPROPRIATION OF MUSC's TRADE SECRETS AND ITS PROPRIETARY AND CONFIDENTIAL INFORMATION

48. While building its HNO Division over the last two decades to perfect the various sophisticated and complicated surgical procedures now performed by HNO Division, MUSC identified and purchased the equipment necessary to perform these procedures, identified the team members necessary to perform these procedures, and developed physician preference cards and instrument lists to perform these complicated head and neck procedures.

49. MUSC's physician preference cards are catalogues of the specific tools, supplies, room setup, types and brands of instruments, pharmaceuticals, and processes to follow for each specialized type of procedure.

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50. MUSC's physician preference cards are confidential and proprietary information belonging to MUSC, not to any individual physician or employee.

51. MUSC's instrument lists identify the specific instruments needed to perform specific procedures by the surgeon.

52. MUSC's instrument lists are confidential and proprietary information belonging to MUSC, not to any individual physician or employee.

53. MUSC's physician preference cards and instrument lists enable the HNO team members to perform the complicated head and neck procedures historically performed by the HNO Division., which often last 10-15 hours and require multiple surgical teams using specialized equipment.

54. MUSC's physician preference cards and instrument lists are not disclosed to the public and are not available in the public domain.

55. MUSC maintains policies and procedures to protect its confidential and proprietary information from disclosure to unauthorized recipients. In addition, MUSC limits access to its confidential and proprietary information with a two-factor authentication system, granting access only to those persons who have a legitimate need to access the information.

56. While still employed by MUSC, without any authority or justification for doing so and in violation of their duties to MUSC, defendants Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC to send MUSC physician preference cards to HCA, which she did by email correspondence to HCA.

57. While still employed by MUSC, without any authority or justification for doing so and in violation of his duties to MUSC, defendant Hornig obtained MUSC's instrument list and emailed this information to HCA.

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58. Upon information and belief, HCA's Trident Medical Center never had the physician preference cards and instrument lists necessary to enable physicians to quickly develop a facility, processes, and procedures to efficiently perform the type of head and neck procedures that have been historically performed by the HNO Division at MUSC.

59. Without the misappropriated physician preference cards and instrument lists, the defendant Physicians would not be able to quickly establish the facilities, processes, and procedures to perform these complicated head and neck procedures at HCA's Trident Medical Center.

60. Upon information and belief, HCA does not have adequate facilities at Trident to perform the types of complex surgeries historically performed by the HNO Division.

61. Upon information and belief, and even assuming HCA has adequate facilities at Trident, it would take HCA and Trident approximately 8 to 10 years to develop independently the misappropriated confidential and proprietary information in the physician preference cards and instrument lists, assuming HCA and Trident was ready, willing, and able to devote the same level of resources that MUSC furnished to the Physicians and the HNO Division over the years.

62. Upon information and belief, absent the wholesale departure by the Physicians to HCA Trident, and absent Physicians' unlawful solicitation of numerous other employees of the HNO Division, including but not limited to nurses and technicians, HCA and Trident would not have the capability to perform the types of complex surgeries historically performed by the HNO Division.

63. MUSC's patient lists are also confidential and proprietary information belonging to MUSC, not to any individual physician or employee. This information is not available to the general public and is not in the public domain.

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64. The day after defendant Davis announced her intent to resign from MUSC, but while still employed by MUSC, she attempted to obtain MUSC's patient lists.

65. The amount of revenue generated by MUSC and the physician's relative value unit or "RVU" are confidential and proprietary information belonging to MUSC, not to any individual physician or employee. This information is not available to the general public and is not in the public domain.

66. Approximately six (6) months prior to announcing his resignation from MUSC, defendant Day obtained his RVU and salary for the past ten (10) years. In addition, he obtained this information for defendant Physicians Sharma, Lentsch, and Hornig, as well as the MUHA hospital.

67. Upon information and belief, defendant Day or other defendant Physicians have provided or intend to provide this confidential financial information to HCA for its use in developing a head and neck cancer treatment program at HCA's Trident Medical Center.

68. MUSC's case logs are also confidential and proprietary information belonging to MUSC, not to any individual physician or employee. This information is not available to the general public and is not in the public domain.

69. While still employed by MUSC, defendant Day obtained his case logs for fiscal years 2019, 2020, and 2021.

70. Upon information and belief, defendant Day has provided or intends to provide these case logs to HCA for its use in developing a head and neck cancer treatment program at HCA's Trident Medical Center.

71. MUSC also maintains confidential and proprietary information regarding its residency program and its HNO Fellowship Program, which is one of only fifty accredited

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fellowship programs for head and neck oncology surgery and treatment. This confidential and proprietary information includes but is not limited to the salaries of the residents and the contracts of the fellows in the Fellowship Program. This information is not available to the general public and is not in the public domain.

72. Defendant Day obtained information about MUSC's residents' salaries and, upon information and belief, Day has used or intends to use this information to compete with MUSC and its HNO Division, and/or Day has provided or intends to provide this information to HCA for its use in competing with MUSC and its HNO Division.

73. Defendant Neskey obtained the signed contracts for the incoming fellows in the HNO Fellowship Program and, upon information and belief, Neskey has used or intends to use this information to compete with MUSC and its HNO Division, and/or Neskey has provided or intends to provide this information to HCA for its use in competing with MUSC and its HNO Divison.

74. In summary, the defendant Physicians have obtained MUSC's confidential and proprietary information with the intent to use this information and/or provide this information to HCA for the development of a head and neck cancer treatment department at HCA's Trident Medical Center, all in violation of the duties owed by the Physicians to MUSC.

THE DEFENDANTS' OVERALL PLAN and SCHEME

75. As alleged in other portions of this complaint, the defendants individually violated various duties and law resulting in harm and damages to the plaintiffs. As alleged in this section of the complaint, the defendants' overall plan and scheme was to effect a wholesale departure of physicians, nurses, technicians, staff, and fellows in the HNO Division and thereby

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establish a head and neck cancer practice at HCA's Trident Medical Center while also attempting to cripple the HNO Division's ability to compete with HCA's new head and neck cancer practice.

76. As part of this overall plan and scheme, the Physicians misappropriated MUSC's aforementioned confidential and proprietary information for use in establishing a head and neck cancer practice at HCA's Trident Medical Center.

77. On information and belief, Defendant Day began planning the exodus of the HNO group, and the misappropriation of MUSC's confidential information, as early as February of 2021.

78. On March 3, 2021, Defendant Day sent an email to Defendant Davis "connecting" Davis with legal counsel to "facilitate discussions around non-compete and legal concerns with future plans." Defendant Sharma was copied on this correspondence.

79. On June 2, 2021, Defendant Day confirmed meetings with Trident and HCA. The purpose of this meeting was "first half will be finalizing contracts and the 2nd will be departure from current employer and timeline."

80. On information and belief, the Physicians, in concert with Trident and HCA, planned a mass exodus as a group from the HNO Division.

81. This plan to leave the HNO Division was formed and executed during the six (6) month time period—at least—prior to each Physician giving notice of resignation. Notably, the Physicians' employment records reflect that during that 6-month period, they collectively took over 1,000 hours of leave. Since July 1, 2021 alone, the Physicians have taken over 700 hours of leave. In addition, during the period in July and August 2021 alone, the Physicians generated collected revenue at 75% of the budgeted amount for those physicians based on their productivity and collections during the prior year.

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82. Defendant Sharma submitted his notice of resignation dated July 13, 2021, with his last day to be November 30, 2021.

83. Defendant Day submitted his notice of resignation dated August 19, 2021, with his last day to be November 30, 2021.

84. Defendant Davis submitted her notice of resignation dated August 30, 2021, with her last day to be November 30, 2021.

85. Defendant Hornig submitted his notice of resignation dated September 10, 2021, with his last day to be November 30, 2021.

86. Defendant Neskey submitted his notice of resignation dated August 27, 2021, with his last day to be November 30, 2021.

87. Defendant Lentsch submitted his notice of resignation dated August 27, 2021, with his last day to be November 30, 2021.

88. On information and belief, the Physicians acted in concert, with each other and with HCA and Trident, to engage in unlawful conduct and lawful conduct using unlawful means to effectuate their overall plan and scheme to the injury of MUSC and UMA, as well as directly harming the HNO Division and the HNO Fellowship Program.

89. At the time of the filing of this complaint, numerous non-defendant employees providing healthcare services in the HNO Division have resigned.

90. Upon information and belief, the defendant Physicians acting individually and in concert with one another solicited the departure of these non-defendant employees in violation of the defendants' legal and contractual duties to not do so, all in pursuit of their overall plan and scheme.

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91. The *en masse* departure of employees, including the Physicians, and the attempted pirating of MUSC's HNO Division was accomplished by Defendant Day working in concert with the other Physicians, Trident, and HCA.

92. Prior to the planned departure of Day and the rest of the HNO Division, Trident and HCA had limited capabilities in the treatment of head and neck cancers in South Carolina. Subsequent to the departure of Day and the Physicians, as well as the ongoing resignations and departures of numerous other employees in the HNO Division, HCA and Trident will have wrongfully converted substantial capabilities in this medical specialty to its own use and to the harm of MUSC and UMA.

93. But for the misappropriation of MUSC's investment, procedures, experience, know-how, and confidential proprietary information, Trident and HCA would have limited if any ability to provide head and neck oncological surgical services.

94. Trident and HCA, in concert with Day and the other Physicians, raided the HNO Division, intending to effectively convert that practice into its own.

95. Defendants at all times acted with malice and in reckless disregard of the rights of MUSC and UMA.

FOR A FIRST CAUSE OF ACTION

(BREACH OF DUTY OF LOYALTY)

96. The allegations of paragraphs 1 through 95 are incorporated herein by reference.

97. As employees of MUSC and Members of UMA, the Physicians owed duties of loyalty to MUSC and UMA.

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98. Based on the conduct alleged above, acting individually and in concert while employed by MUSC and a member of UMA, Physicans breached their duties of loyalty to MUSC and UMA, including but not limited to the following wrongful and unlawful conduct: (a) misappropriation of the plaintiffs' confidential information, proprietary information, and trade secrets; (b) soliciting other healthcare professionals to leave MUSC and UMA; and (c) interfering with the operation and accreditation of the HNO Fellowship Program.

99. As a proximate result thereof, MUSC and UMA have suffered and will continue to suffer substantial damages, entitling MUSC and UMA to awards of actual and punitive damages.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS)

100. The allegations of paragraphs 1 through 99 are incorporated herein by reference.

101. The individual defendants had valid contractual relationships with MUSC and membership obligations with UMA.

102. Trident and HCA knowingly, intentionally, maliciously and through improper means interfered with actual contractual relationships, causing injury to MUSC and UMA.

103. MUSC has valid contractual research agreements with third parties.

104. Physicians, while still employees of MUSC and members of UMA, acting individually and in concert with all other defendants, knowingly, intentionally, maliciously and through improper means interfered with the contractual relationships with these third parties, causing injury to MUSC.

105. MUSC had valid contracts with other healthcare professionals in the HNO Division.

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106. Physicians, while still employees of MUSC and members of UMA, acting individually and in concert with all other defendants, knowingly, intentionally, maliciously and through improper means interfered with the contractual relationships with these other healthcare providers, causing injury to MUSC and UMA.

107. MUSC has contracts with current and future fellows in the HNO Fellowship Program.

108. Defendants, acting individually and in concert with one another, have attempted interfered with the fellowship contracts and attempted to lure the fellows away from the HNO Fellowship Program and to Trident and HCA.

109. As a proximate result of the conduct described above, MUSC and UMA have suffered, and will continue to suffer, substantial damages, entitling them to an award of actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(CIVIL CONSPIRACY AGAINST ALL DEFENDANTS)

110. The allegations of paragraphs 1 through 109 are incorporated herein by reference.

111. Prior to the Physicians providing their respective notices of resignation, and thereafter while the Physicians were still employees of MUSC and members of UMA, the Defendants conspired, combined and agreed to hijack MUSC's HNO Division and move it to Trident and HCA.

112. The purpose of the conspiracy was to injure MUSC and UMA by attempting to cripple or cause it to cease operations of MUSC's HNO Division. To that end, the defendants

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conspired and agreed to have individual defendants engage in a variety of unlawful and improper acts, as described in the preceding and subsequent paragraphs of this Complaint.

113. As a proximate result of the conduct described above, MUSC and UMA have suffered and will continue to suffer, substantial damages, thereby entitling them to an award of actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF CONTRACT)

114. The allegations of paragraphs 1 through 113 are incorporated herein by reference.

115. Physicians were each subject to the contractual terms of employment, including provisions set forth in the MUSC Faculty Handbook and MUSC's Code of Conduct, which provisions are incorporated by reference into each Physician's contract with MUSC.

116. Physicians each breached the express terms of their respective contracts, as well as the implied covenant of good faith and fair dealing that exists in all contracts under South Carolina law, including Physician's contracts with MUSC and UMA, when they engaged in the above-described acts as early as March of 2021, including but not limited to the misappropriation of confidential and proprietary information and trade secrets, the solicitation of other employees to leave with them, and interference with the HNO Fellowship Program.

117. As a proximate result of this breach by each individual defendant, MUSC and UMA have suffered and will continue to suffer damages, entitling them to an award of actual damages together with prejudgment interest at the statutory rate.

FOR A FIFTH CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A SEPARATE FRAUDULENT ACT)

118. The allegations of paragraphs 1 through 117 are incorporated herein by reference.

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119. In connection with their various breaches of contract, Defendant Day and the other Physicians fraudulently induced the fellows to commit a critical year of their professional training to the HNO Division Fellowship Program for 2021-22, with the fellows believing Day and the other Physicians would be supervising and training them when in fact Day and the other Physicians knew they intended to leave MUSC and would not fulfill their commitments and obligations to supervise and train those fellows.

120. As a proximate result of these fraudulent acts accompanying the individual defendants' breaches of contract, MUSC is entitled to an award of punitive damages in addition to the award of actual damages under the Fourth Cause of Action.

FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT)
(S.C. Code Ann. § 39-5-10 *et seq.*)

121. The allegations of paragraphs 1 through 120 are incorporated herein by reference.

122. Based on the conduct described, all defendants willfully and maliciously engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code § § 39-5-10 *et seq.*

123. The conduct of all defendants impacts the public interest and is immoral, unethical and oppressive. Among other things, the defendants' conduct had the specific intent of completely eradicating MUSC and UMA as a competitor so as to adversely impact the public interest by eliminating a competitor from the pertinent market, thereby leaving the public with fewer choices in the area of head and neck cancer treatment.

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124. Plaintiffs have suffered ascertainable loss of money and the value of their substantial investments in the HNO Division a result of the defendants' employment of unfair and deceptive acts declared unlawful by S.C. Code Ann. §39-5-20.

125. The defendants' conduct was willful and knowing because the defendants knew or should have known that their conduct was in violation of SCUTPA.

126. As a proximate of the defendants' conduct, MUSC and UMA have suffered and will continue to suffer injury and an ascertainable loss, entitling them to an award of actual and consequential damages, and treble damages on the grounds that Defendants' conduct was willful, together with an award of costs and attorneys fees, as well as prejudgment interest at the statutory rate.

FOR A SEVENTH CAUSE OF ACTION
(SOUTH CAROLINA TRADE SECRETS ACT)
(S.C. Code Ann. § 39-8-10 *et seq.*)

127. The allegations of paragraph 1 through 126 are incorporated herein by reference.

128. The information, procedures, techniques, physician preference cards, instrument lists, and know-how related to the HNO's surgical practice is proprietary to MUSC and UMA.

129. This information, procedures, techniques, physician preference cards, instrument lists, and know-how derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its use.

130. MUSC and UMA make reasonable efforts to maintain the secrecy of this information, procedures, techniques, physician preference cards, instrument lists, and know-how, including but not limited to confidentiality agreements.

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131. This information, procedures, techniques physician preference cards, instrument lists, and know-how has been misappropriated from MUSC and UMA by the defendants, acting individually and in concert with one another.

132. Based on the conduct described above, Defendants have engaged in the willful misappropriation of MUSC's and UMA's confidential and proprietary information in violation of the South Carolina Trade Secrets Act ("SCTSA"), S.C. Code § § 39-8-10, *et seq.*

133. As a proximate result of the conduct described above, MUSC and UMA have suffered and will continue to suffer damages, entitling them to an award of actual damages. The defendants' conduct was willful, entitling MUSC and UMA to an award of exemplary damages in an amount equal to twice the amount of actual damages plus attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION AGAINST NESKEY, HORNING and LENTSCH (BREACH OF COVENANT NOT TO COMPETE)

134. The allegations of paragraph 1 through 133 are incorporated herein by reference.

135. Physicians Neskey, Hornig, and Lentsch signed covenants not to compete.

136. Neskey's covenant includes the following terms: (a) he shall not practice medicine in his "specialty," *i.e.*, the areas of medicine that he practiced during the last 18 months of his membership in UMA, within a 20 mile radius of the UMA/MUSC facility or location where he provided the majority of his services during the 18 months preceding the end of his UMA membership; (b) he shall not solicit and UMA/MUSC physician or non-physician to terminate their employment or membership with UMA for any employment or personal services arrangement other than with UMA; (c) he shall not use or disclose UMA's confidential information for any purpose other than performing his duties on behalf of UMA, said confidential information

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includes but is not limited to contract terms and financial information related to UMA; and (d) this covenant lasts for 18 months after the end of his membership in the UMA.

137. In lieu of complying with the foregoing restrictions, Neskey had a buy-out option of paying UMA a lump sum amount equal to amount of his Professional Services Compensation funded by UMA during the 12 months preceding the termination of his membership in UMA. Otherwise, UMA is entitled to an award of *inter alia* actual damages and attorney's fees incurred in enforcing the agreement, with the actual damage award to include but not be limited to the amount of his Professional Services Compensation funded by UMA during the 12 months preceding the termination of his membership in UMA and the amounts incurred or expended by UMA to recruit a replacement member to UMA and MUSC.

138. Upon information and belief, Neskey will commence practicing his specialty on or about December 1, 2021, at HCA's Trident Medical Center, which is within the 20 mile radius prescribed by the covenant.

139. As of the filing of this complaint, Neskey has not exercised his buy-out option and, therefore, UMA is entitled to an award of actual damages together with prejudgment interest at the statutory rate plus attorney's fees against Neskey.

140. Hornig and Lentsch signed covenants not to compete that included the following terms: (a) in consideration of his employment with MUSC and his membership in UMA; (b) he shall not "practice medicine" for two years after his departure within a 25 mile radius of the facility where he spent 50% or more of his professional time with UMA and MUSC; and (c) in lieu of compliance with the covenant, he has the option of paying his department liquidated damages within 30 days after separating from UMA and MUSC, said damages to be in an amount equal to

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1.5 times the amount of his "total compensation" earned during the last twelve months of his employment with MUSC and his practice through UMA.

141. Upon information and belief, Hornig and Lentsch will commence practicing medicine on or about December 1, 2021, at HCA's Trident Medical Center, which is within the 25 mile radius prescribed by the covenant.

142. As of the filing of this complaint, neither Hornig nor Lentsch has exercised his option to pay the damage amount prescribed by the covenant and, upon information and belief, neither Hornig nor Lentsch intend to pay said amount within the 30-day period prescribed by the covenant, which period shall end on Thursday, December 30, 2021.

143. Absent compliance with the buy-out provisions of the covenant on or before December 30, 2021, Hornig and Lentsch are each liable for the liquidated damages amount prescribed in the covenant together with prejudgment interest at the statutory rate.

FOR A NINTH CAUSE OF ACTION AGAINST LENTSCH
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

144. The allegations of paragraph 1 through 143 are incorporated herein by reference.

145. On July 1, 2021, before Lentsch gave notice of his intent to leave MUSC and the HNO Division, Lentsch negotiated with Department Chair, Paul Lambert, M.D., for an advance payment of $16,000.00 of his FY22 salary with the proviso that, if Lentsch left MUSC in FY22, then Lentsch would return the advance payment. This advance payment is commonly known as a "guardrail" payment at MUSC. The terms of the advance payment, including Lentsch's obligation to return the payment, was memorialized in a written July 1, 2021 memorandum.

146. On September 2, 2021, before MUSC administrative staff was aware of his notice that he was leaving MUSC, Lentsch physically went to the offices of UMA and picked up the

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check for $16,000.00. As required by the July 21, 2021, memo and per Dr. Lambert's prior instructions, UMA administrative staff required Lentsch to sign the July 1, 2021 memo, which included the requirement that he repay the $16,000.00 if he departed MUSC in FY22. Lentsch knowingly signed the memo, and he took the check and deposited it.

147. Lentsch has not returned the $16,000.00, despite his announced intent to leave MUSC on November 30, 2021 (which is part of MUSC's FY22) and, upon information and belief, Lentsch does not intend to return the $16,000.00 when he leaves MUSC.

148. The July 21 memo signed by Lentsch constituted a contract between him and MUSC and UMA for the payment of the $16,000.00. Lentsch has breached this contract by failing to return the $16,000.00 as required by the contract and, therefore, MUSC and UMA are entitled an award of $16,000.00 in actual damages plus prejudgment interest at the statutory rate.

149. When Lentsch obtained the check on September 2, 2021, from the UMA administrative staff, he knew but did not disclose to the staff that he was leaving MUSC on November 30, 2021. His failure to disclose this fact, which would have resulted in the staff not giving him the check, Lentsch committed a separate fraudulent act that entitles MUSC and UMA to an award of punitive damages for Lentsch's breach of contract.

FOR A TENTH CAUSE OF ACTION AGAINST LENTSCH
(FRAUDULENT INDUCEMENT)

150. The allegations of paragraphs 1-149 are incorporated herein by reference.

151. Upon information and belief, Lentsch knew at the time that he negotiated the advance payment with Dr. Lambert that he would be leaving MUSC in FY22 and therefore was not entitled to any advance payment.

152. Lentsch had a duty to disclose this information but did not do so.

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153. Dr. Lambert did not know and had no reason to know at the time of the July 1, 2021, memo and agreement that Lentsch was intending to leave MUSC in FY22, and he justifiably relied on Lentsch's silence and failure to disclose in reaching this agreement.

154. Lentsch knew or should have known that Dr. Lambert did not know of Lentsch's true intentions, and that Dr. Lambert was relying on Lentsch's silence (with a duty to disclose) in reaching the agreement.

155. Lentsch fraudulently induced MUSC and UMA to enter into the July 1, 2021, memo agreement.

156. Lentsch fraudulently obtained the $16,000.00 payment by requesting the payment, by signing the July 1, 2021 memo agreement, and by taking the payment when he knew that he was leaving MUSC in FY22 and was therefore not entitled to the receive the payment.

157. Based on the foregoing, MUSC and UMA are entitled to an award of $16,000.00 in actual damages, together with prejudgment interest at the statutory rate, plus an award of punitive damages.

FOR AN ELEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(TEMPORARY AND PERMANENT INJUNCTION)

158. The allegations of paragraph 1 through 157 are incorporated herein by reference.

159. The defendants, acting individually and in concert, have engaged and, upon information and belief, continue to engage in the following wrongful and unlawful conduct to the injury of MUSC and UMA without justification or cause: (a) continuing to possess and use the plaintiffs' confidential and proprietary information and trade secrets; (b) soliciting employees of HNO Division to leave and join the new head and neck team at HCA; and (c) interfering with the

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HNO Fellowship Program, including interference with the relationship and contracts between the fellows and the HNO Fellowship.

160. This ongoing wrongful and unlawful conduct has caused and continues to cause the plaintiffs irreparable harm and, therefore, the plaintiffs are entitled to an injunction, both temporary and permanent as follows: (a) enjoin the defendants to stop this wrongful and unlawful conduct; (b) enjoin the defendants to not make use of and return all confidential and proprietary information, including trade secrets, to the plaintiffs, including any all copies, pictures, photographs, mock-ups and any other memorialization of the information by any and all means; (c) enjoin the defendants from billing or collecting money for services performed using any of the plaintiffs' confidential and proprietary information and trade secrets, including but not limited to the physician preference cards and instrument lists; (d) enjoin the defendants from any interference with the HNO Fellowship Program and from any recruiting or solicitation of any MUSC Fellows; and (e) enjoin the defendants from any further recruiting or solicitation or other contact with current employees, associates, agents, and fellows regarding any potential employment with HCA.

REQUEST FOR RELIEF

WHEREFORE, MUSC and UMA hereby request an award of the following relief against the Defendants:

a. compensatory damages against Defendants, jointly and severally, in an amount to be proven at trial and awarded by the jury, together with prejudgment interest at the statutory rate;

b. punitive damages against each Defendant individually in an amount to be determined by the jury;

c. treble damages and attorney's fees pursuant to SCUTPA;

d. exemplary damages and attorney's fees pursuant to SCTSA;

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e. an award against Physicians equal to all compensation, including salary and commissions, paid to them during the period they were disloyal and were breaching their duties owed to MUSC and UMA;

f. imposition of a constructive trust on and the disgorgement of all monies and benefits earned by Defendant HCA as a result of the unlawful conduct herein described;

g. entry of temporary and permanent injunctive relief as requested above and as requested by motion for temporary injunction filed with this Complaint; and

h. such other and further relief as may be deemed appropriate under the circumstances, and as may be hereafter requested.

TRIAL BY JURY IS DEMANDED.

s/*Celeste T. Jones*

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November 19, 2021
Columbia, SC

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-CP-10-05289

Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC; Terry A. Day; Betsy Kay Davis; Joshua D. Hornig; Eric J. Lentsch; David M. Neskey; and Anand K. Sharma,..... Defendants,

Of Whom HCA Healthcare, Inc. and Trident Medical Center, LLC, are,..... Respondents.

NOTICE OF APPEAL

Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina appeal the orders of the Honorable Jennifer B. McCoy dated December 15, 2021 and February 18, 2022. Appellants received written notice of the entry of the December 15 Order on December 15, and timely moved to alter or amend it on December 28, 2021 (December 25 was a Saturday; December 27 was a holiday). Appellants received written notice of the entry of the February 18 Order denying the motion to alter or amend on February 18, 2022.

March 21, 2022

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	2021-CP-10-05289

Medical University of South Carolina, et al.,

Plaintiff,

vs.

HCA Healthcare, Inc, et al.,

Defendant.

TRANSCRIPT OF DIGITALLY-RECORDED HEARING

December 9, 2021
Charleston, South Carolina
(Via Webex)

B E F O R E:

The Honorable Jennifer B. McCoy, Judge Presiding

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P R O C E E D I N G S

* * * * *

THE COURT: Motion was filed about a week and a half ago or two weeks ago based on the filing date, and I'm happy to hear from the attorneys for both sides, obviously with the moving party going first. Just please state your name for the record and who you are representing. I'm happy to hear from you. I do have in front of me on my computer all of the exhibits and memoranda that have been filed by both parties, including the one filed earlier today.

MR. WERNER: Okay. Thank you, Judge.

MS. JONES: Thank you, Your Honor. May it please the Court? My name is Celeste Jones, and I am counsel for the plaintiffs in this action, the Medical University of South Carolina and University Medical Associates.

This action is for several different claims that are set forth in the complaint related to the Hospital defendants. The South Carolina Trade Secrets Act, the tortious interference related to the physician's duty of loyalty and fiduciary duties, conspiracy, and intentional interference with those contractual relations and the South Carolina Unfair Trade Practices Act.

As you probably know, Your Honor, MUSC and HCA or Trident are Healthcare Systems. MUSC and Trident are located both here in the Charleston area, and they are competitors. The now dismissed position defendants made up the majority of what we have referred to and defined in the pleadings as the head and neck division at MUSC. The Head and Neck Oncology program was built at MUSC over more than two decades of time and millions of dollars of investment by the State through MUSC, and by the UMA. The value of the -- of the program and that division to the citizens of South Carolina is literally to save and preserve life. There is no dispute that the defendants, the Hospital defendants, engaged with the physicians while they were still employed at MUSC, and they formulated this plan, and systematically orchestrated an in-mass resignation of the Head and Neck Oncology Group and have and are continuing to take and usurp the Head and Neck Oncology data processes information, and their goal is to take that entire business line to HCA and Trident, and to destroy the program at MUSC.

This began and has been ongoing for more than ten months before they left, while they were still

employed, and I will go into those details during this presentation. All of the defendants, all -- both of the hospital defendants actively planned and participated in the scheme. I had in this cases in the past run across one of the constitutional cornerstones for this country, and it was written by John Adams. And he said, "The moment that the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commenced. If thou shalt not covet and thou shalt not steal were not commandments of Heaven, they must be made inviolable precepts in every society before it can be civilized and made free."

MUSC historically, Your Honor, was founded in 19 -- in 1884. It is the oldest medical school in the South, and the tenth oldest in the United States of America. As Demonstrative Number 1, I have a copy for the Court to take judicial notice of, the 1913 Act Number 126 where the Medical College of the South was formed where the South Carolina -- the Medical College of the State of South Carolina was formed to establish the medical school here. It existed under the guidance of those original

documents, and today is governed under Section 59-123-10 under Title 59 in the Education Act. It is the -- and that's when it was -- the name was changed to the Medical University of South Carolina. Chapter 123 of Title 59 contains all of the information related to the makeup of MUSC, the appointment of its Board of Trustees, and its operations by the General Assembly and the Governor, and it sets forth the powers and the responsibilities. One of those responsibilities under Title 59 of the Education Act is that we are -- we are regulated by the Commission on Higher Education in South Carolina. And to that end, have established and adopted our mission statement. And the mission statement for the Medical University of South Carolina as approved by the Trustees is that the Medical University of South Carolina is South Carolina's only comprehensive academic health sciences system. Our purpose is to preserve and optimize human life in South Carolina and beyond. MUSC provides an inter-professional environment for learning, discovery, and healing through education, research, and a provision of comprehensive healthcare.

The University Medical Associates is a not-for-

profit 501(c)(3) member organization made up of faculty of the Medical University of South Carolina. In 1991, the General Assembly recognized MUSC in Section 44-7-3130 as a public body in this state. And I give that information to the Court, Your Honor, as background because one of the factors that this Court must address in making the determination in this case is the public interest that is at stake in this litigation.

The hospital defendants, HCA and Trident, I would refer the Court to the plaintiff's master Exhibit Number 5, the CON application that was recently filed by Trident to add operating room expansion and space for these Head and Neck Oncology surgeons to be able to try to do these surgeries there. At page 15, it sets forth in the attestation the corporate relationship between Trident Medical Center and HCA Healthcare Inc. HCA Healthcare Inc., the Court could take judicial notice of it, but Counsel for HCA has provided the Court with an affidavit explaining that HCA is a for-profit entity that exists to operate their healthcare systems to the benefit of their shareholders and stockholders through the payment of enhanced stock value and dividends. The individual physicians that have been

dismissed from the action at this point in time but that were involved involved three physicians who served in endowed chair positions in the Head and Neck Oncology Division for more than 20 years. It also involved the Head and Neck Oncology Fellowship program director at MUSC. Those are important, Your Honor, because they were high-ranking officials at MUSC in this division. The law, in general, that governs employees of one company and another company was actually developed and also, at this point in time for pretty much every company that has any number of employees in this country, established many of the precepts that the law establishes in their handbooks. And master Exhibit 5, which is the MUSC Faculty Handbook, page one of that handbook sets forth the fact that the handbook itself functions as part of the University faculty appointment contract between each faculty member and the University. At page 47 of the Faculty Handbook, it sets forth that the policies contained in the handbook apply to the faculty, the staff, including all full, part-time, temporary, and contract employees of the Medical University. And I bring that up, Your Honor, because of one of the affidavits that the defendants had filed in this

case by Dr. Horwich who was a former fellow, and when you're a fellow at the Medical University, you're under contract and you are paid a salary and you are an employee.

The other provision in this handbook that I think is important for the Court to take note of during this hearing is at page 80. It's section 1. -- 7.12 and 4.1. It is the definition of intellectual property, and in the handbook, it specifically provides that the intellectual property of MUSC and UMA is know-how/show-how unique materials and tangible results of a research. It includes all of those things that are highlighted in the PowerPoint there for the Court. The motion that is to be decided today by the Court is the Medical University and UMA's motion for temporary injunction. We speak in this -- in our motion, if you would put the motion page up, this is the excerpt from the motion. (Do you see it? Thank you.) Six different aspects of this motion. The first three is to prohibit the hospital defendants -- the first one is to prohibit the hospital defendants from further utilizing the plaintiffs' confidential and proprietary information, including the instrument list, the patient list, the physician

preference cards, and the financial data. The second part also relates to the proprietary information and asks that the Court require the hospital defendants to return all of that information taken. And thirdly, to prohibit them from billing, collecting, or otherwise making financial use and profits all for the use of MUSC's confidential and proprietary information. That's the first three provisions.

Paragraphs four and five in the motion relate to MUSC's Head and Neck Oncology Fellowship program. This Fellowship program as I walk the Court through in a moment is one of 50 accredited programs in the United States of America to train the next generation of Head and Neck Oncology surgeons and healthcare providers. There's only 50. And the one at MUSC has existed for a decade, and we are asking that they be enjoined from further interfering with the fellowship program in any way or with the fellows that are currently matched and employed at MUSC, and to prohibit them from contacting the Fellowship Accreditation Program.

I'll demonstrate for you in a few minutes the contact that has occurred and the damage that has already occurred as a result of that contact.

And finally, Your Honor, in paragraph six of the motion we are asking the Court to enjoin the Hospital defendants from further recruiting and soliciting or otherwise contacting the members of the MUSC and UMA employees in the Head and Neck Division regarding employment at HCA to prohibit them from interfering with our workforce. And I'll also -- we've got the documents that we have been able to locate so far in that regard, Your Honor, but I can tell you that there have been more than a dozen members of the Head and Neck Division, staff people who have now resigned and -- and left MUSC.

So the first thing I want to walk you through from a factual standpoint is the property. And the information that we have based this on related to MUSC's property. And I would call your attention first to Exhibit 9, the financial information. We know that at least as far back as February of this year, this plot began, and in May, there was obtained from MUSC unwittingly the people -- the staff people, Judge McCoy, who work over at the University and work for these -- worked for these very important positions and leaders in the Head and Neck Oncology Division would, of course, from time to time ask them to provide the doctors with

information. In May of this year, they were asked and unwittingly provided information related to the finances of not only the individual physicians that are at issue here, but also the head and neck WRVUs (Go back to the first page if you would, please, go one page back, this one.) -- the spreadsheet that had the head and neck RVUs, and that's relative value units. In healthcare, tracking occurs based on WRVUs. Payment and salary information is also calculated based on WRVUs. The relative unit value is basically what is assigned or negotiated as the value of a particular surgical procedure or study or visit with a patient between the physician and the patient. And everybody -- everybody tracks them, the NGMA, which is a National Medical Group Management Association, establishes on an annual basis the WRVUs for every CPT code that is billed by healthcare providers in this country. It is the information that goes to Medicare, to Medicaid, to all of the third-party payers and insurance companies, and it is -- it is kind of a -- a peculiar area of nomenclature, but WRVUs is how you track the money. And he acquired this information at this point in time when -- when they knew, when the defendants knew, that this plot was

afoot. So this is the financial information. Exhibit 9 in the plaintiff's master exhibits is likewise, (If you would go to Exhibit 9, please. Not that -- we're finished with this one, the patient list. Oh, no, I'm sorry, 8, sorry about that. I, you know, it's Exhibit 8.) -- and this is another group of patient lists that relate to these Head and Neck Oncology patients over at MUSC. Dr. Tucker, who is referenced here, had left the MUSC and moved out west somewhere, not long before all of this, and so Dr. Tucker's patient list was provided and there was a request also for another patient list, that list was not provided. And I will tell the Court that. But that's Exhibit 8. And this is information, Judge McCoy, that we've been able to locate on the MUSC, you know, email accounts once we were aware of the scope and the magnitude of what was going on here in regards to this business. (If you could go now to Exhibit 7, the instrument list.)

We also know based on emails that we located that the instrument list, and as you can see this email, it is to a Mr. Logue@HCAHealthcare.com. This is where the instrument set list for these different procedures from the -- that are listed here, those attachments are the proprietary information. That

is information we have for the Court at your, you know, request to review in camera. I will tell you this, the names of the things that are on those instrument lists, I don't understand them. I think you have to have a medical degree to understand them. But it is important, you know, for the Court to understand that there are particular lists for each procedure that is performed, because when they roll a patient into the operating room, and the surgeon and the OR nurse and the surgical technician and everybody's standing there about to perform this very important cancer removal or flat case, everybody knows what's going to happen. They know what's supposed to happen from A to Z, and they have those instruments organized and set up and ready to go. Because that's the way you can fill the mission of MUSC, that's the way you take care of the patients, that's the way it's properly done. And the assimilation of these sets of lists over time at MUSC spans more than two decades, and it is confidential and it is information that has inherent value to it. And that's really important as a matter of -- of the legal analysis that's applicable in this case.

The next exhibit is Exhibit 6. Exhibit 6, Your

Honor, is the -- there are four different sets in Exhibit 6, and this is the cover letter of, again, one of the staff people, one of the nurses at MUSC at the request of a physician sending to Ms. Whitehead at HCA Healthcare the physician cards. As set forth in the affidavits of -- and we provided the Court with three affidavits that really walk you through this from Dr. Pat Cawley, Dr. Cawley is the chief officer of the Medical University Hospital Authority. He's an officer and a faculty member of MUSC, and he's also an officer of the UMA. Dr. Cawley and Dean DuBois -- Dean DuBois is the dean at MUSC of the College of Medicine. These two physicians have explained in detail in their affidavits the utility of the information that are contained in these cards. Again, I have this information to hand to the Court for an in-camera review. It is confidential information. If you want me to, I can hand it up to you now. If you ask me questions about what some of this stuff means, I doubt seriously I'll be able to answer it, but I do have it.

THE COURT: What are those exhibit numbers; if you don't mind?

MS. JONES: This is Exhibit -- the two that are

in-camera is Exhibit 6 and 7.

THE COURT: I have those. I've already been sent those by, I think, protected email.

MS. JONES: Okay. All right. Good. Thank you, Your Honor.

MR. WERNER: Well, may I -- Your Honor, are we not entitled to see those if we're going to be talking about them and arguing them? I mean we may have a duty to maintain the secrecy of them as well for purposes of the hearing, but we're entitled to see what's been given to Your Honor.

MS. JONES: They were sent to HCAHealthcare.com.

THE COURT: When these were sent to me, who -- I mean they came through my law clerk is how they ended up on my computer, but tell me who sent the link.

MS. JONES: The link was sent by my office through instructions from the Clerk's office about how to send a secure link for an in-camera review.

THE COURT: Okay. Was the other side copied on that correspondence?

MR. WERNER: No.

MS. JONES: No. If he says no, he's right. He wouldn't tell you something that isn't right.

THE COURT: Okay. Well, you know, if you have a

copy, obviously, you know, he's entitled to, sure, review it as well.

MS. JONES: But as you can see from the email, they already have it.

THE COURT: Right. I'm happy for him to look to follow along.

MS. JONES: So -- and it has to be -- you know, it has to be pursuant to, you know, whatever -- to the Court telling him they can't share it with anyone else, that's it's attorneys' eyes only.

THE COURT: Sure.

MS. JONES: Okay. Thank you.

So those are the preference cards. That relates to the property that we are currently aware of. The next group of exhibits relates to the interference with the fellowship -- Head and Neck Oncology Fellowship training program. And it really begins with Exhibit 11. August 26th, 2021, is the date of this exhibit. And in Exhibit 11, it is set forth a couple of questions, one regarding the fellows, "We are planning on having them transition with us." In their words, not mine, they're planning on having the fellows transition with them to HCA. Exhibit 12, the next exhibit -- I'm sorry, Exhibit 15. Exhibit 15, Your Honor, is the request on June the

3rd to get copies of the actual signed contracts and agreement that MUSC has with the fellows, and this was the physician who was the -- who was the chair of the Head and Neck -- of the Fellowship Program. I want to be sure I've got his title right. He was the Fellowship Program Director. And when this was going on, MUSC and the UMA think these people are working for them and the Fellowship Program Director. He gets copies of the actual agreements on June the 3rd, and then on August the 26th, master Exhibit 11, well, that's the one we just went through where they say the plaintiff had taken with them, then master Exhibit 12 is correspondence that came and we located, not at the time, it was not turned over to other officials at MUSC at the time, but it did reach us eventually because we went back into their emails and found all of this, and prior to September the 4th, there was communication to Dr. Donald Weed. Dr. Weed is the head of the accreditation group that accredits the Head and Neck Oncology training programs in the United States. And Dr. Weed is writing and says, "I appreciate your notifying Amy, and he's referring to Amy Hessel (phonetic) there who's also one of the members of the accrediting society, about the potential major

changes to the Head and Neck Division at MUSC and the potential impacts of these changes on the Fellowship. Again, MUSC, the Dean didn't know about this, the President didn't know about it, the Board of Trustees didn't know about it, they just knew about it.

And then in Exhibit 13, by the time Exhibit 13, which is September the 21st, by the time this letter was written, and this letter, Your Honor, comes from the American Head and Neck Society. This is the accrediting organization that provides the graduate medical education accreditation for Head and Neck Oncology training. And this is written -- at this point in time, we did have information that Dr. Neskey was leaving. And so Dr. Lambert, who was the chair of Otolaryngology at MUSC also got copied on this letter. And what this letter says, coming from Dr. Weed, is that "At the departure of the four head and neck faculty on December 1st, MUSC has stated its intention to continue its AHNS accredited Head and Neck Fellowship." And then he says here, "The MUSC Head and Neck Fellowship will no longer meet advanced training counsel minimal requirements for AHNS accreditation as approved at the last site visit in 2019. Furthermore, despite the intention

of the departing Head and Neck faculty, to apply for an AHNS accredited Head and Neck Fellowship based at Sarah Cannon Cancer Center, (Go back to where we just were. I didn't finish it.) -- a new fellowship cannot be accredited at any institution without having the training and elements in place for an appropriate ATC evaluation and consideration." Judge McCoy, that's explained in Dean DuBois' affidavit to this Court. It takes years to become accredited to teach people to do these procedures. And what this shows, not in my words, their words, is that the intention was to take the fellows with them when they left and torpedo the program at MUSC and apply for the program to be established at the HCA facility. That's just as plain and simple as it gets, Your Honor. We also have, in a couple of other exhibits, requests where information was provided regarding the ENT residents that -- so they would have all their names and photographs and information about who all the individuals are. We think that the circumstantial evidence is clear, that it was because of this plan to interfere with the program at MUSC and try to establish a program over at HCA and Trident.

The last group of exhibits I want to call to the Court's attention are those that relate to the solicitation of our employees by HCA and Trident during the time period that the -- that the individual physicians were still employed at MUSC. And those are set for at master Exhibits 30 through 34. Exhibit 30 is the first resignation of a nurse practitioner who was -- who worked, as she says in her resignation letter, with the -- with the Head and Neck Surgery team. She says, "It was not an easy decision to make and I would like to sincerely thank the entire Head and Neck Surgery team for the opportunity to learn and grow here over the past three years."

Exhibit 31 is a direct solicitation and contact from HCACareers.com to Kimberly Kinnel (phonetic) at MUSC inviting her to interview with them for an RN or OR lead nurse position. Again, a member of MUSC's Head and Neck division. Exhibit 32 is an actual recruitment agreement that was executed (Go to the next page, please.) This is an actual recruitment agreement. "Trident Health is pleased to confirm your agreement to participate as a resource in the Hospital's position recruitment process." This was in September of 2021 while the

individual's still employed by MUSC. Exhibit 33 -- and this particular individual, Dr. Holton, was one of the former fellows at MUSC. This is Exhibit 33. This, again, is a direct solicitation to Dr. Meyer, Ted Meyer, excuse me, Your Honor, for an ENT position at HCA. Again, this is coming from HCA Healthcare. And then Exhibit 34, the last one that relates to the interference with the workforce is related to -- actually this is a an email from the OR clinical coordinator for the ENT surgery department that worked with the Head and Neck Oncology Group, and she is sending the offer that has been made to her by HCA Healthcare to MUSC to see if MUSC will pay her this increased amount that they're offering to lure her away or match it.

I'd like to discuss with the Court for a moment the law and the standard. And I would first ask Your Honor to refer to the decision by Justice Hearn in Peek vs. Spartanburg Regional Healthcare System in 2005. This case addresses the standard in South Carolina related to injunctive relief. And in this case, the plaintiff in the case, Dr. Peek actually had been on staff at Spartanburg Hospital as an anesthesiologist for a period of time. The Spartanburg Hospital System had decided to go to

what we call a closed unit and just have one contract with an anesthesia group, and that anesthesia group be responsible for all of the services. And they were terminating Dr. Peek's privileges. And what -- what Justice Turner wrote in this opinion is that Dr. Peek was entitled to an injunction. And she was entitled to an injunction because she was able to show that the loss of a line of business that she had worked on and developed at this hospital over a period of time, being suddenly taken away from her when she had a claim that it may violate the hospital bylaws to do so, entitled her to injunctive relief. And what I'd like to point out to you is a couple of paragraphs in this opinion that I think are instructive here. The first one is on page 4 of the opinion, and it goes into the issue of irreparable harm. And I do this, Your Honor, because that's one of the issues that the defendants' have raised in their memorandum. And what -- what the opinion here instructs us is that the Trial Court should balance the equities. The Court should look at the particular facts of each case and the equities of each side and determine which side, if any, is more entitled to equitable relief. It also tells us in about two lines down

that the -- the function of a temporary injunction is to preserve the status quo. And it also tells us that whether a wrong is irreparable in the sense that equity may intervene and whether there is an adequate remedy at law are questions that are not decided by narrow and artificial rules. And the Court as one of the matters should look at the equities of what is involved here and the public interest, and in regards to irreparable harm, the Court stated on -- let's see where it is, at the bottom of page 4 that the complete loss of a professional practice can be an irreparable harm. That language is picked up on and utilized extensively in a second case that I'm going to discuss in a minute by Justice -- not Justice, by Judge Henry Herlong in a case that he decided a couple of years ago. But in Peek, the Court went on to say that the plaintiff need not prove, this is on page 6 of the opinion, "When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right. The plaintiff need only present a fair question to raise as to the existence of such a right. And then once (the next one) a prima facie case showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be

granted without regard to the ultimate termination of the case on the merits. And I say that to Your Honor because that is the argument that the defendants make in this case. And finally, at the end of this, the Court said here monetary damages are not the only option. An injunctive relief is a better remedy because it would allow Peek to retain both her patient base and her expertise while also retaining her income. The Medical University wants to retain both their patient base, their referral base, and their expertise, and their income in seeking this temporary injunction.

I think, Your Honor, this case -- this case really sets forth the -- I think the four corners of the law in regards to a temporary injunction in a situation like before the Court. But when you get to the substance of the claims here, I think the two cases that are most destructive is the original case, Lowndes Products that was decided in 1972 by the Supreme Court. In in Lowndes, there was a gentleman who had worked for Lowndes Products. He had a position of some authority where he had exposure to materials, and he gave a very short notice, left, went to work for a competitor, and took actions in the weeks before he left to try to

move an entire line of business from his then current employer to his new employer. And a couple of the things that the Court talks about in this case is the duty that that employee had to notify his employer instead of luring other coworkers away, that -- that one of the factors was that Lowndes Products had showed that, you know, before this, the Lowndes Products had a continuing profitable business enterprise that they were running, and that -- that -- that the new company acted with the employee to do financial harm and -- to the profitable business relationship and try to destroy it by the instigation of the plot for this guy and his coworkers to move over to the competitor. And the Court there said they appropriated to their own use a carefully developed business relationship inconsistent with and detrimental to the appellant, who was the employer. And the Court said at page 8 of the Westlaw opinion, but it's page 761, the Southeastern Reporter, that -- that the employer, the plaintiff in the case, was entitled to collect all damages proximately resulting from the wrongful conduct, including BLS Corporation. That's the company that the employee had gone to work for here. And on remand, the only issue for determination by

the lower court will be what amount of damages should be awarded the appellant against those employees and the ones that left with him, and BLS Corporation. And in the very end of the decision, and I think this is important, Your Honor, the BLS Corporation has profited from the wrongful conduct of the parties that brought it into being and should be held liable along with the individuals, jointly and severally for losses which the appellant has sustained. The law in South Carolina is joint in several liability. One of the arguments that I believe they're going to put forth to you is that this isn't the Hospital's problem, it's the doctor's problem. But that's not the law.

And finally, the last case I want to talk to you about is Industrial Packaging Supplies vs. Martin. This is the decision by Judge Henry Herlong. It is -- it involves an employee Mr. Martin and the company he went to work for, Unisource Worldwide, a direct competitor as set forth in this opinion of the plaintiff IPS. And in this case, Judge Herlong goes through the facts and says in his final week of employment, Martin scheduled appointments with numerous IPS customers in a coordinated attempt to convert the customer base IPS had assigned to Martin

and to take it to Unisource. Judge Herlong went on to write -- and this is his opinion granting the temporary injunction in that case, the product, technology cost, processes, designed processes, material supplies, and distributors and customers were information that had been given to the new employer. And that the -- in this case the plaintiff had requested (if you would go to the first tab) a restraining order, a preliminary injunction enjoining the defendants from using, disclosing and transmitting any of that confidential information as identified. And what the Court order was that the defendant, the employee, and Unisource Worldwide be enjoined directly or indirectly, alone or in concert with others, from selling any product based in whole or in part on any confidential, proprietary, or trade secret information that belonged to IPS. In reviewing the public interest aspect of the case in this order, Judge Herlong noted that it's also in the public interest to preserve the status quo and to protect the sanctity of the agreements between the employers and the employees. And this injunction, under the Court's order, remained in effect until further proceedings. I think the case ultimately settled and was resolved

between the parties, but I think that is helpful and instructive to the Court in going through the analysis of granting a TRO in this case.

The evidence that we put forth in our three affidavits and in the documents that we've located so far, and the exhibits that we've located so far, is both testimony of the affidavits and the documents. And I think its important, Judge McCoy, because the documents that establish the wrongdoing that we know about so far and the harm here, those documents don't change their story. They don't change their mind. They don't put a spin on it. They are what they are. They're contemporaneous and they don't change their story. And in their words, not mine again, if you go to Exhibit 16, February the 11th, 2021, they are contacted, our Sarah Cannon team, Sarah Cannon/HCA leadership visit, our Sarah Cannon team, and Sarah Cannon is set forth in their information is their cancer group or what they call their cancer group, is pleased to hear that your ongoing dialogue, this is February of this year, this is -- I don't know how many months ago it was, but anyway, months and months ago, about ten months before they left, is pleased to hear your ongoing dialogues with the South Atlantic team have been

productive. I want to invite you to join us in Nashville for introduction to key Sarah Cannon/HCA leaders. So HCA, its South Atlantic team, Sarah Cannon, and Trident, were all working on this knowingly. If you look at Exhibit 18, by June the 2nd, this is a communication in which the physicians are discussing that HCA has confirmed the meeting in their South Atlantic Division Headquarters. That office, Your Honor, sits on Daniel Island in the City of Charleston. The meeting, the first half will be finalizing contracts, and the second will be -- and I think this is important, departure from the current employer and the timeline. Their words, not mine. Exhibit 20, this is an email sending the then negotiated and finalized contract, and it says, "Here's the contract." This is a complex extraction from our current employer. It's an extraction. A group of us is leaving. We will not sign these contracts. This is in July. Even though they're finished, for anywhere from four to fourteen days based on how the extraction process goes. They couldn't be clearer in what their intentions were, and what they're agreement and plotted path is with the Hospital defendants. The resignations that they submitted were in late August -- were in August --

and most of them in late August, and that's really where MUSC and the UMA were getting wind of what was going on. But again, they didn't know. These people didn't come forward and say, "Guess what we're taking with us? Guess what we've done? Guess what we're going to do." All of this information, these emails, MUSC and UMA had to go in those systems and locate this information. It wasn't handed over. There was a duty to disclose it, but it was never disclosed. It was found out over a course of the investigation. And the resignations were made with 90 days' notice, the shortest notice possible under the agreements. It was done willfully, purposefully, and with the intent to extract as much property and employees and interfered with the fellowship program and do as much financial harm to MUSC as possible to inflict the maximum harm.

I'm just about finished. I know you're tired of listening to this.

The injunction here, Your Honor, is to maintain the status quo with MUSC's property, to have it returned to us and them not make any use of it outside of MUSC, for them to stop all their interference with our fellowship program and to stop

their interference with our workforce. In the end, the evidence is, I think, conclusive that about what was taken, what we know about that was taken that belongs to MUSC in our state and I -- you know, I just have to say it would be unconscionable for a wrongdoing this egregious to go unanswered or unstopped, and it's like Justice Hearn wrote in the Peek decision, the balance of equities shows that my clients are more entitled to equitable relief and the record that is before you, I think, wholly supports the conclusion that MUSC built this practice, this Head and Neck practice and division over more than 20 years, and investments of millions of dollars, and they did it to fulfill their mission, to serve the citizens of South Carolina, to educate the next generation of Allied Healthcare providers and the complete loss of this professional practice and this business line is irreparable harm under the decisions that we've cited to the Court. The patients, the citizens of South Carolina, the next generation of doctors and nurses and therapists in training would all be protected and served with this injunction.

And I will end with this. One thing that we do know for sure is that there is no 20-year investment

of anything at Trident. They didn't have a Head and Neck Program in Charleston. And if they're allowed to go forward by usurping all of this and taking it over there, it is going to have a substantial impact on the Medical University and its business. Trident's own CON, which is Exhibit 4 -- Exhibit 4 is a certificate of need that Trident filed in late August to expand their operating rooms for the purpose of, and if you go to Exhibit 4 to page 6, it's for the new oncology surgeons and others coming over. They're adding three additional ORs. Page 7, they need to expand the surgery department to assure it's got the capacity to meet the needs of these newly recruited physicians, and they have to have the much -- rooms, the ORs will be much larger in size and more than 600 square feet each. These larger ORs are better suited for the increasingly complex surgical cases being performed. When you read the affidavits from Dr. Cawley and the Dean, you will see that these surgeries are done in teams. They take 15 or more hours to complete. They are highly complicated and require a lot of cooks in the kitchen who know what they are doing and can work seamlessly together with tried-and-true procedures. And I will tell you that if you look at NCON

applications, which is attested to and certified by Trident, the exhibit to the CON, its attachment B16 is the financial information. And this one page in the financial information at B16 is the projections, one thing companies like HCA don't do is they don't jump in until they've done a detailed financial analysis on the money. And this shows that their projected incremental totals by the addition of these three ORs is $16.2 million. We don't need -- not our words, their words. The -- and that's really all I have in this presentation, Your Honor.

THE COURT: Okay.

MS. JONES: As it happens, we're meeting here today before the Court asking for this, and the Board of Trustees of MUSC are right down the peninsula today in their scheduled quarterly board meeting. And I know all of them are hoping and praying that they'll get news from the Court that the Court has intervened and that the University's property will be returned and be protected, and that the status quo will be maintained because they are -- they are over the decades that I've had the privilege of representing them, they are truly devoted to the mission.

Thank you, Your Honor.

THE COURT: I'm happy to hear from you, sir. And if I could get a projected time. My Court's been going without a stop since 9:30 this morning. According including all this personnel and I don't -- just if you have an idea?

MR. WERNER: Do you want to take a break now, Judge? I mean --

THE COURT: Well, it depends about how long you think you're going to go. Certainly not more than --

MR. WERNER: I'll try to be as brief as possible, but I mean --

THE COURT: Twenty-five minutes; something -- about right?

MR. WERNER: I'll try to limit it to 30 minutes or less. I can do that.

THE COURT: Okay. Then go ahead.

MR. WERNER: Let me begin short of where Counsel ended, and then I'll come back to the in-between. Plaintiffs come here and ask to cloak themselves in what they say is their mission, which was described as assuring the provision of quality care to patients and training and educating physicians to provide quality care. And yet, one of the injunctive remedies they seek from Your Honor is to

stop Trident and these physicians, who of course they've now settled for them, we'll talk about that -- settled with them, and we'll talk about that separately, but from billing or collecting money for services performed utilizing any of plaintiffs' confidential and proprietary information, including instrument list, patient list, position preference cards, and financial data. Now it doesn't take much, Judge, to understand what they're asking you contrary to the cloak of their mission. They're asking you to stop these physicians and Trident from providing the care to these Head and Neck cancer patients at that hospital. They're asking you to stop allowing those patients to get that care, and they're asking you to stop the physicians that they claim is their mission to train and to send out into the world to provide better medical service from taking what they learned and providing those medical services. So let's not -- let's not be fooled in any way about what's really going on compared to what they claim their mission is.

Now let's come back about why we're here. We're here because they've asked you to intervene in this case and to grant what our Supreme Court has said over and over again, it is a drastic remedy and

extraordinary relief only to be given when it is truly necessary. That's what -- that's what the fundamental standard for injunctive relief is. Now what's the more detailed standard? Well, the more detailed standard is that you've got to make sure that they, in fact, have a basis for a claim for injunctive relief, then you've got to judge whether or not they will be irreparably harmed if they're not given the relief, whether or not they have a likelihood of success on the merits, and whether they have other adequate remedies at law.

Now you were shown and told a lot of things, and it's -- I apologize, but on the short notice of this stuff, and I understand both of us are under the same thing that we just filed our memoranda very recently, but -- so this may be a little more disjointed then I usually like it to be, but I'm going to try to give you some information. First, let me deal with this question of the documents that were handed to Your Honor in camera. At the bottom of these documents, Judge, on each of them that I could see from flipping through, it now says -- now says "Highly confidential, subject to Rule 408, Settlement discussions only." Now you know from reading that that that's not the stamp that was on

these in the ordinary course of business, obviously. We have printed off, and I'll be glad to give it to Your Honor in camera or however you would like it, from the emails that they marked as exhibits where they say that persons and -- "Persons sending them from MUSC email addresses, MUSC computers, MUSC employees so identified, sending physician preference cards and instrument lists to Trident." We've printed off everything that came with those emails. And I'm happy to let Your Honor look at them, I'm happy to let Counsel look at it if she hasn't looked at it from her own documents. I'll let her look at my copy. And I'll be happy to let Your Honor look. You will see there's an index in the front. Now you can look through the equipment list and look through the preference cards, I invite Your Honor to find -- stop me when you find one, any place on any of those documents where it even identifies them as coming from or being associated with MUSC, number one; anywhere on any of those documents where it says that it's a trade secret; anywhere on any of those documents where it says it's confidential; anywhere on any of those documents that it says it's proprietary; anywhere on any of those documents that it says "Do not

disclose." Obviously you're welcome to look at all of them, and you're not going to find it anywhere. So they want you to believe that documents that they sent out from their computers to Trident are confidential, or privileged, or proprietary, or trade secrets when none of them are so identified, labeled, marked, designated, whatever you want to call it. The other thing that's significant, you were asked to look at some emails where you were told, look, see, they sent these things out, and every one of them was sent from an MUSC email address, from an MUSC server, and I invite you to look at the dates on those. I think some of them were -- the exhibit numbers were -- I'm sorry, I can't see very well in the light, I think they were in the range of exhibits in the -- I think it's in the 20 grouping, Judge. As they were put on the board, I was looking to confirm. When were they sent out? They were sent out in July and August and the first week of September. Now -- and I don't want to read our memorandum to you, but we've tried to put a fair amount of both law and fact in there for you, and one of the things that, of course, is significant is our Supreme Court has said that if you're going to try to claim confidentiality in

information or documents, if you're going to try to claim proprietary interest, and God forbid if you're going to try to claim they're a trade secret, you must exercise eternal vigilance in protecting those. We've given Your Honor the authority about what our Courts have said you've got to do, and you've got to do that, and you've got to allege that when you try to enforce those things to establish that you have any trade secret or any confidential material or any proprietary information that deserves any protection under the law. They did none of that. What did they say they did? The only thing they say they did in their affidavit, in their complaint, is they say buried in the boughs -- it's actually you have to go to a link, it's not actually in there, you have to go to a link in their faculty or facility handbook, you have to go to the Code of Conduct, click the link, and what does the Code of Conduct say? The only thing it says is, "Employees shall not disclose confidential information." Now if I told you, Judge, that we've been going in here for quite a while and you've heard confidential information, what good does that do you? Do you know what you've heard that was supposed to be confidential? You can't just claim after the fact that you have

confidential information. You've got to tell people, "This is confidential." You cannot disclose this. They did nothing to protect this information, and they deserve no protection for it under the law. That's critical in this case, in part because they specifically alleged that they are entitled to injunctive relief pursuant to or in accordance with the South Carolina Trade Secrets Act. So if they don't qualify under that act to protect that information, they don't get -- they don't deserve this injunction. You've been shown, and I'm responding to these mostly because they were sort of the last things that Your Honor might have been looking at, keeping score on, they describe in their exhibits some documents that they want you to believe implicate Trident in this matter. And I should go back and say, Your Honor, very clearly, as you know, we have filed a motion to dismiss the claims against HCA pursuant to 12(b)(2). And we are confident that, in fact, they have no -- there is no personal jurisdiction over HCA in this State in this case. And without them establishing that, their duty to establish it, there is no injunction hearing relative to HCA. There can be no injunction involving HCA. Now we're here and we're talking

about HCA and we're talking about Trident, but please understand, and I don't know the law says it, but we're certainly not waiving that in any way. But let's talk about what is going on with these things. They want you to believe based exclusively on them alleging it in inclusary *[sic]* fashion, that there was a conspiracy. Have they pled anything that tells you when that conspiracy occurred, how it occurred, who was involved, what was it a conspiracy to do? No, no allegations about those things. Most of the allegations in that complaint, in fact, 14 allegations against HCA or Trident are all made only upon information and belief. When you read the affidavits they've submitted, which, as Your Honor has probably seen if you've had a chance to look at them, are nothing more -- I don't know which one came first, whether the allegation in the complaint or the affidavit, but they say exactly the same thing. Most of the material allegations in the complaints are made upon information and belief. Now it's interesting, two of the allegations that are made in the affidavit, I think it's the affidavit of Mr. DuBois, I think that's correct -- no, it's -- I'm sorry, it's not Mr. DuBois. I apologize. It's in our brief and we cited the

statements. But he said two very significant things. He said these instrument lists and these physician cards were, in fact, developed by these physicians. In fact, he says these physicians, these six physicians put together over 100 physician preference cards dealing with specialized procedures. But we're to believe that they're confidential materials that these physicians don't already know themselves, can't already recreate themselves, shouldn't be allowed to use unless they do it at MUSC, so if you treat -- if you treat a sick patient at MUSC, it's okay, but if you want to take information that you've learned over a long, successful medical practice and treat somebody anywhere else, oh, no, no, no, MUSC says you can't do that. And that want Your Honor to enjoin patient care. They want Your Honor to impose restrictions on what they want to call solicitation, whatever that means, because they don't define it, to impose restrictions on talking to, interviewing, hiring employees. Your Honor, that conduct is illegal. The parties could not agree to do that, and Your Honor can't order it to be done. It's a restraint of trade. We cited to Your Honor, in fact, the Biden Administration is making a big push,

particularly in the healthcare industry, to, in fact, prohibit and limit such things, which are often called no-poach agreements. What -- what MUSC wants to do is at a time in the healthcare industry, when there are critical shortages of personnel at various levels and positions, they want to say, well, we can try to get them, but you can't. It's interesting, we can't solicit their employees. We can't contact their employees. Do they acknowledge the same restriction on themselves? Because again, if they came to Trident and they said, "Hey, come on, let's play nice with each other, let's agree we're not going to do this," they're both in big trouble, Your Honor. But they want you, under the guise of an injunction, to do what cannot be done legally. They want you to believe that -- well, first of all, they only allege that the physicians have a fiduciary duty or a duty of loyalty here. They admit we owe them no such duties. They then wanted to go through some emails, interestingly enough, just looking at certain portions of them pretty quickly, hoping, I guess, that Your Honor didn't notice it, HCA doesn't appear on any of those emails. Exhibit 20, I think they refer to, it's an email with First National Bank. There's no

communications with HCA about, oh, this complicated extraction of people from MUSC. There is not even a single allegation in this complaint or in any of the affidavits that Trident knew or had any reason to know when it received these cards or these instrument list that those things were confidential or proprietary or claimed to be a trade secret. And they had no -- they have not even alleged that we had any reason to believe that those things had been wrongfully misappropriated by others and that when they were transmitted to us by employees at MUSC out of the MUSC computer system, that that was not authorized. All of those things, as we cited to you in the case law, are absolutely essential elements for them to plead and prove that claim and to get injunctive relief. Now, if you read the complaint, if you read the affidavits and if you listened to Counsel's arguments this morning, you know that what they've really alleged here is that these physicians did things they don't like. And yet -- and they've acknowledged it to Your Honor, I don't know that they've given Your Honor the settlement agreements yet. I'd be happy to do that, but they have settled and provided a full release to these physicians. The fact of the matter is, Judge, that these

physicians had the right to leave their employment at MUSC. The three of them who had a liquidated damage buyout provision for their non-compete agreements have agreed to pay that, and they have been released. All they've -- all they've done in that settlement agreement is say to the physicians you have to pay us this money, you've got to agree to destroy these documents, the ones that they describe, equipment list, case logs, physician preference cards, and so-called financial information, you've got to destroy those. And you've got to agree to not use those documents. But they want you to issue an injunction which doesn't say we can't use the documents, it doesn't say that we've got to return the documents, no, instead they use this language, which, of course, respectfully, Your Honor, I believe if you signed an order with this language it would be facially invalid because it provides no definition, no specificity, but they want you to order that it's the confidential and proprietary information including, and in one place I think they say including but not limited to, those actual documents. So I guess they want to say that they've now released the physicians so that the physicians can use the information, they just can't

use the documents. And then when those physicians perform surgeries at the Trident facility, which they are doing, and I'll come back to that because they -- they provided a lot of self-serving, again, upon information and belief, surmise or speculation about what Trident can and cannot do, and we've addressed some of that by the affidavit of Dr. Horwich, but I'll give you some more information. But it appears that what they are hoping to do is to set up a situation where they've now freed the doctors to use that information. They just can't use the documents, and yet have Your Honor sign an order, which says if the information, undefined as that is, is used by us, we're in violation, we're in contempt of an injunction. That's preposterous. Frankly, having heard the rah-rah speech about their glorious mission, it's insulting to me that a facility that wants to claim that cloak of specialty -- specialness would suggest that they can do those things and that they can get Your Honor to do those things in an order. These services are being provided to patients who need them, Judge. Dr. Horwich's affidavit addresses very specifically that that capacity existed before these physicians started working over there. Will it increase? Will

it improve? Absolutely. Is Trident committed to spending money? Absolutely. So the future of the healthcare provided to patients there is not the issue here. The issue is simply that MUSC believes that it owns everything. They have the right to tell these physicians, "You don't get to use your expertise. You don't get to use your no-how unless you do it for me." And that's wrong. And it cannot be sanctioned by the injunction they are requesting.

THE COURT: All right.

MR. WERNER: You've asked me to be short.

THE COURT: Yeah, Obviously --

MR. WERNER: That's shorter than I would normally be because there are a lot of legal things.

THE COURT: No, that's --

MR. WERNER: We put it in a brief.

THE COURT: I understand, yeah, I have, and you've filed your brief today. Obviously I'll have to, you know, take a look at that. I'm not going to issue a ruling today given the late hour at which briefs were filed in this case. And I owe it to the attorneys and the parties involved to thoroughly read, memoranda they have submitted and filed with the Court.

A brief five-minute or less response from the Plaintiff at this point in time.

MS. JONES: Yes, Your Honor. Just real quickly, very, very briefly, I'll just ask the Court to read Judge Herlong's opinion and Justice Hearn's opinion in those two cases.

THE COURT: I will.

MS. JONES: The -- you know, the guidepost presented by Counsel about what the law is and what the law isn't, I completely disagree with. We're not saying these people can't work, they need to work. What we're saying is they can't use our information, and what their settlement agreement says is they agree not to use our information. So what we're asking this Court to do --

THE COURT: But isn't that information, the intellect and the experience they've gained over the past several years, so ineffectively that would render them useless at the next facility?

MS. JONES: No, it wouldn't render them useless at all. No. They -- what they know between their head, in their head, they can use. They can't use our proprietary information. And did we keep it secret? It's in -- it's in the affidavits. There was a two-factor authentication system with

unlimited access for any of this information. That's more than enough under the law to -- for the protection. What I hear Trident saying is they've got it, they intend to use it, they intend to make money off of it, and they intend to take -- they intend to jump the line, they intend to take the research and development done by our company, just like every company in America does research and development and develops systems and processes and products and that is protected property under the law. They don't want to -- they don't want to do their own research and development. They don't want to do that. The physicians can practice head and neck surgery. They can do it with equipment list that they develop on their own over at Trident and HCA, but it will take them decades to do it probably. They can't take our information and use it, and they've agreed to that in the settlement.

THE COURT: Okay. I appreciate it. Thank you very much.

MR. WERNER: Your Honor, may I very quickly respond because that was, I hope, an unintentional. We have the copy of the settlement agreement, and I would be happy to provide it to Your Honor.

MS. JONES: I have them all.

MR. WERNER: Excuse me?

MS. JONES: Yeah, we can hand them all up to you if you want them, Your Honor.

MR. WERNER: Yeah, I was -- I mean I wasn't going to hand her all six, but if you want me to, we can do that.

MS. JONES: One's enough because they all say the same thing --

MR. WERNER: Yeah, they're the same.

MS. JONES: -- except for the financial part of it.

MR. WERNER: Right. Right. Let me find one, Judge, that doesn't have my highlighting.

MS. JONES: Do you want to do this one? Do you want me to give her this one?

MR. WERNER: Yeah, have you got one?

MS. JONES: It's got all the signatures on it. Hand it to the Clerk, Your Honor?

THE COURT: Well, the court reporter will have to mark it first. Is this confidential?

MS. JONES: And it's not --

MR. WERNER: No, there's no confidentiality provision to it, Your Honor.

THE COURT: Mark it Exhibit 1.

MR. WERNER: And -- sorry, wait for the court

reporter.

(Whereupon, Exhibit Number 1 is marked for the record.)

THE COURT: And also, if you don't mind stating your name for the court reporter, as well.

MR. WERNER: Oh, I'm sorry. I apologize. I'm Jim Werner representing the Defendants HCA and Trident. My apologies.

THE COURT: All right.

MS. JONES: I do want to say one other thing for the record. The bottom of the in-camera stuff, that was on there because -- you know, we all had somewhat negotiations for the past couple of months that didn't pan out.

MR. WERNER: Yeah, and I -- that clearly reflected that it was not on there originally. That was my point, Judge, --

THE COURT: Sure.

MR. WERNER: -- that they were not marked that way.

THE COURT: Understood.

MR. WERNER: I would simply -- in here, Your Honor, I would call your attention to paragraph number two of the settlement agreement and, you know, obviously words matter, particularly words

when it's in a legal document like a settlement and release drafted and negotiated between Counsel. And what this says very specifically is that the physician, again, each one says the same thing, hereby warrants that he has destroyed or shall destroy by December 8, 2021, the following specific documents or records, including photocopies to the extent they are in his possession, custody, or control. And then it lists physician preference cards, case logs, or instrument lists created during his employment with MUSC and membership with UMA. The next one, documents reflecting MUSC and UMA's revenue for work performed by physician. Next one, documents or copies reflecting the salary information or contracts of other employees or recruits of MUSC and members of UMA. And then it says, "Physician hereby warrants that beginning on the effective date, he will refrain from using any of the documents or records referenced in this section two." Nowhere does it say the information, but the injunction motion that they filed with you specifically says that they seek to enjoin and have you order the destruction or the return, and that they cannot in any way use, utilize, I think, was the word I think they used, the information

including but not limited to the cards, the list, etcetera. They clearly are trying to impose a much broader restriction than simply the documents, and they cannot do that.

MS. JONES: The one sentence that didn't get read into the record is, "That physician acknowledges that MUSC and UMA contend that the documents or records specifically referenced in this section two are confidential and/or proprietary."

MR. WERNER: That's correct. They acknowledge in an agreement they signed two days ago, Judge.

THE COURT: Uh-huh.

MR. WERNER: It doesn't say that they acknowledge that they were that way before.

THE COURT: Okay. All right. Thank you very much. It's helpful. I'll get an order issued as soon as possible, and if I need a formal composed order, I will request it from your offices.

MR. WERNER: Okay.

MS. JONES: One thing that I didn't address was the personal jurisdiction issue. I know you know this, but all of the exhibits we went through, HCA Healthcare is all over them. They're all over that.

THE COURT: Why don't you brief that issue and submit it to the Court by --

MS. JONES: I will do it.

THE COURT: -- mid next week if possible, next Wednesday.

MS. JONES: Absolutely. Absolutely.

MR. WERNER: Judge, may I -- I'm sorry, may I just give you one more bit of information and we'll supplement the record with this if it matters. I think this is referenced in our affidavits, but it's important for you to understand, we've been talking to the credentialing of experts and everything. Those case logs that are referred to, and we've provided information about the fact that they're required for accreditation and certification and the like, and that they're normally provided, etcetera, but we are told that literally we would be prohibited under regulations from releasing those, giving them back, because they are necessary for audit purposes of some of the regulatory bodies, not just for us, I mean any hospital has the same obligations with respect to physicians who have been credentialed. So that speaks to two things. One, again, I think Your Honor has to take that into consideration and whether or not they should ever been the subject of an injunction, but they also point out that -- that points out pretty clearly,

they're not confidential and protected information.

THE COURT: Okay. Thank you. All right. We're at ease.

MS. JONES: Thank you, Your Honor.

Whereupon, the hearing was concluded at 2:54 p.m.)

- - -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Cathy L. Young, Certified Verbatim Reporter/Master for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the digitally recorded hearing in the Family Court for Charleston County, South Carolina, on the 9th day of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

This, the 18th of January, 2022

Cathy L. Young

CATHY L. YOUNG, CVR-M

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	2021-CP-10-05289
	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, PLAINTIFFS,	)	
vs.	)	TRANSCRIPT OF RECORD
HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ARAND K. SHARMA, DEFENDANTS.	)	

May 13, 2022
Charleston, South Carolina

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE.

A P P E A R A N C E S:

JAMES K. GILLIAM, ESQ.
Attorney for the Plaintiffs

JIM WERNER, ESQ.
Attorney for the Defendants

PENNY M. JOHNSON
Court Reporter III

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

PROCEEDINGS

THE COURT: How are y'all?

MR. WERNER: Well, thank you.

MR. GILLIAM: Thank you, Judge. Doing well.

THE COURT: Good. Well, I appreciate y'all being accommodating of each other and the Court. We will go forward this morning by this WebEx recording device. It's being recorded on WebEx, but we actually also have a courtroom reporter, monitor, that's Ms. Caressa Johnson there. You see her name on the attendee list, perhaps. That's who that is, so she'll be aiding us in the recording as well in today's hearing. Obviously, aside from myself, Ms. Victoria Tuten is my law clerk, so that's who that is this morning.

And I think we have everybody here that we need to proceed; is that correct?

MR. WERNER: Yes, ma'am, from the defense side, Your Honor.

THE COURT: And Mr. Gilliam, you'll be presenting for MUSC and as Plaintiffs; is that right?

MR. GILLIAM: Yes, ma'am.

THE COURT: Well, this is obviously your motion for supersedeas. I've reviewed your motion and I've got it in front of me so I'll be able to refer to that as well during your argument today. If you would not mind, we all know

each other, but if you don't mind for purposes of the record, just stating your name and who you're hear representing.

I'm happy to hear from you.

MR. GILLIAM: Sure. Thank you so much. May it please the Court. My name is Jim Gilliam. I represent the Plaintiffs in this case. The Plaintiffs are the Medical University of South Carolina, or MUSC, and the University Medical Associates of the Medical University of South Carolina, or UMA.

We're here today, as the Court said, on the Plaintiff's motion for supersedeas. Your Honor, I just want to begin by saying that, you know, we're not here simply to rehash the same arguments that we made during our motion for temporary injunction. We understand that the Court heard those arguments and the Court made a decision to deny that Motion.

And with respect to that motion -- or with respect to that ruling, I should say, we're pursuing the traditional appellate route. The thing about traditional appeals is that they take time. And the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court rules, they recognize that.

And one thing they allow a party to do while an appeal is pending is to file a motion for supersedeas relief. And what a supersedeas relief, what it is, is it's, essentially,

a temporary injunction. It preserves the status quo during the pendency of the appeal.

And there are two overarching reasons why the Court -- or two things the Court thinks about in determining whether to grant that relief, and they're interrelated. Number one is to preserve status quo. And status quo has a specific meaning. It refers to that point in time, it's the last uncontested status between the parties before the controversy arose. So preserve the status quo, or to preserve the fruits of the meritorious appeal.

Absent exceptional circumstances, what the rules require is for this petition for supersedeas to be made first in the circuit court and not to the Court of Appeals. That may not be intuitive at first blush, but there's a recognition within the rules that, you know, circuit courts just, frankly, move faster than our appellate courts. And, also, too, Your Honor, you've heard the motion for injunction, so you're more familiar with the case. To the extent this sort of supersedeas relief is appropriate, the Court is in a position to grant that relief on a more expedited basis.

And the rules also envision a situation like before the Court today where the Court may have denied a motion for temporary injunction, but still may decide to grant supersedeas relief, to protect status quo and to preserve

the appeal.

Today, what MUSC is asking the Court to do is to grant supersedeas relief to protect its confidential and proprietary materials during the pendency of this appeal. We're asking the Court to do two things: Tell Trident HCA to return those materials to us and tell them to refrain from using it while the appeal is decided.

When we talk about MUSC's confidential and proprietary materials, we're talking about five buckets of things. I'm not going to go into them in great detail, but just so the Court knows, it's physician preference cards, instrument lists, financial materials, you know, really, two types of financial materials showing what the head and neck -- members of the head and neck team, how much money they generated, how much money they were paid. We're also talking about case logs. We're also talking about financial materials as it relates to our fellows and our residents, what they're paid, their contracts.

So as it exist right now, MUSC is obviously a competitor of Trident. Trident HCA is in possession of MUSC's confidential and proprietary materials. The evidence shows that the way that they became in possession of those materials is -- you know, there's no two ways to say this. It's through employee theft. We have individuals who were employees at MUSC. While they worked for MUSC, they took

MUSC's confidential and proprietary materials and they sent them to a competitor, to the place where they were going to go work, at Trident HCA.

You know, the important thing for the Court to know is that happened during the course of employment. This happened while these individuals were employed by MUSC and before they were employed by Trident HCA.

And when we talk about the individual defendants, we're talking about those six people who are still on the caption of this case. They are highly trained medical professionals. They used to be part of MUSC's head and neck cancer team. Now, they're part of Trident HCA's head and neck cancer team.

And this misappropriation happened, even though MUSC took reasonable steps to protect these materials. We're talking about materials that are not in the public domain. We're talking about materials where access to it is limited, only to those people who are authorized users, who are going to use it for legitimate purposes. We're also talking about materials where we have policies and procedures in place to make sure that unauthorized disclosure doesn't happen. We also have a two-prong authentication system to protect these materials.

So in this case, Your Honor, what you're really dealing with, you're dealing with two different head and neck

practices. You're dealing with MUSC's on the one hand and you're dealing with Trident HCA's on the other. And it goes without saying, this is very specialized medical care.

When you're talking about MUSC's head and neck practice, you're talking about a practice that's been around a long time. It started in the late 90's. And when you're talking about Trident HCA's, you're talking about a new practice. They're just now starting their practice, they're trying to compete with MUSC. One of their first steps was to hire the individual Defendants away to compete with MUSC.

So one of the things that really makes this practice go is MUSC's confidential and proprietary materials. I think the best way to think about is like a playbook, right? And this playbook is not built overnight, it's built over time. And the advantage that MUSC has over Trident HCA as it relates to this head and neck space is they were here first. They began innovating first. They began working and perfecting their materials first. They've invested a lot of money into these materials. And it's not the product of any one person's work. We're talking about work that's been -- comprehensive work that's been done by a number of different professionals over time.

And when we talk about, like, just for example, the physician preference card, those aren't materials that are created by one person. Those are materials that are created

over time by many people. It's an embodiment of a plan. Say, if we're going to perform these complicated head and neck procedures that may last up to 15 hours, this is how we need to set up the OR. These are the materials we need to have. These are the materials we need to have. These are the supplies we need to have.

So MUSC has those materials because they've had their head and neck practice for a while. Trident HCA doesn't, or they didn't until it came into possession wrongfully and unlawfully of MUSC's materials.

In this case, all we're asking Trident to do, if they want to compete with us, that's fine, we're just saying play by the rules. Build your own stuff. Create your own stuff. And the reality is it would take time to do that. Trident doesn't want to spend the time, they don't want to spend the dollars to compete lawfully.

We submitted an affidavit to the Court, an affidavit from a gentleman by the name of Timothy Brendle. In his opinion, it would take eight to ten years for Trident to catch up to where MUSC is from a head and neck perspective.

You know, in employment space, we recognize this freedom of movement. If employees don't like where they're working, you know, they can go resign. They can resign and they can go work somewhere else. And what the employee gets to take with him is he gets to take his education, his

experience, his know-how, really, what's in his head. That belongs to the employee. There's no freedom in our country that's absolute, right? We live in this system of counterweights. It's been said that I've got the freedom to swing my fist, and that's true, but it's not unfettered. It ends somewhere. Maybe where someone else's face beings, right?

When we're talking about this freedom of movement, it's not unrestricted either. What you can't do -- while you can go from one job to the next, you can't take your employer's materials and take them to your new job. And that's true even if you're an employee and you had a hand in developing those materials. Those materials don't belong to the employee. They belong to the company. And that's -- the Milliken case, that's what we cited. It's a 2012 case from the South Carolina Supreme Court.

And that's what happened in this case, the individual Defendants, while they were still employees of MUSC, they took MUSC's confidential and proprietary materials and they sent them to their new employer, Trident HCA.

I talked earlier about status quo. And what we're asking the Court today is to send us back to that moment in time, to return us to the status quo. The point in time in which the status quo was upset is when these individual Defendants took MUSC's confidential and proprietary

materials and sent them to Trident HCA. Before that happened, the status quo was Trident did not have our materials. And that's where we want to return.

So, Your Honor, once MUSC learned that the individual Defendants had taken their confidential and proprietary materials, this lawsuit was born. A motion for temporary injunction was filed. Before that motion could be heard by the Court, the individual Defendants agreed to settle. There are many components to that settlement, but for us today, there's really only two components that we need to talk about. One is a monetary component. The individual Defendants paid 1.7 million dollars to MUSC as part of that settlement. Every individual defendant contributed significantly to that settlement sum.

But there's also the matter with MUSC's confidential and proprietary materials. Through the settlement agreement, the individual Defendants agreed to do two things with respect to MUSC's confidential and proprietary materials. To destroy those that were in their possession and to refrain from using them in the future.

So this is a very important piece of this argument. I want to read this to the Court. This is the settlement agreement, it's only two sentences, and it's in Paragraph 2. And the Court has these settlement agreements. Thee's six of them, they're all the same. Here's what it says:

Physician hereby warrants that he has destroyed or shall destroy by December 8th, 2021, the following specific documents or records, including photocopies to the extent they are in the physician's possession, custody or control, physician preference cards, case logs or instrument lists created during his employment with MUSC and membership with UMA, documents reflecting MUSC and UMA's revenue from work performed by physician and documents or copies reflecting the salary information or contracts of other employees or recruits of MUSC and members of UMA. Likewise, physician hereby warrants that beginning on the effective date, he will refrain from using any of the documents or records specifically referenced in this section two.

So it's just like I said to the Court, two obligations on the individual Defendants, destroy and refrain from using in the future.

If we look at Trident HCA's memorandum of law, it's troubling what they have said to the Court. I want to read three statements that they have made to the Court. First, this is what they say: In the settlement agreements between the physicians, who are the individual Defendants, and the Plaintiffs, the physicians had merely agreed to destroy certain documents it referenced. They say, and they underline this, the physicians never agreed they could not or would not use any knowledge or information reflected in

the various documents or records. And they continue: Whatever documents and records relative to the physicians which had been previously delivered to Trident by MUSC or the physicians remain unrestricted with Trident. Meaning, they can do whatever they want to with them.

That's what they're telling the Court, okay? What Trident HCA is telling the Court is they're going to use MUSC's confidential and propriety materials while this appeal is pending. They're going to show them to the individual Defendants.

So the big advantage that MUSC has as it relates to this head and neck space is that we were here first. We started innovating and developing first. That advantage is going to be eroded on appeal because before the Court of Appeals can ever reach the decision of whether the injunction should be reversed, Trident HCA is going to use MUSC's confidential and proprietary materials and they're going to be showing them to the individual Defendants.

It's clear that supersedeas relief is appropriate in this case. And I'm sure Trident HCA is going to try to misdirect as they have done historically in this case, and say MUSC is just trying to keep these physicians from practicing medicine or MUSC is trying to keep these physicians from using what's in their head. To be clear, we are not and that's never been MUSC's aim. We're saying you

have our materials and we want it back, that's all we're saying in this case.

I do want to talk about the law a little bit because it's important. So the foundation in which Trident HCA's memorandum of law exist is for this proposition of law that does not exist in South Carolina. What Trident HCA says is that supersedeas relief can only be granted to preserve the status quo at the time the notice of appeal was filed.

And they cite two cases for that proposition. One is an unreported case from California. One is an unreported case from New York. Both are federal cases, but neither are here in South Carolina. Neither are binding precedent here in South Carolina. And if you look closely, what Trident HCA has done, too, is they have a string of citations, so they cited those cases directly for that proposition.

But they say well, other cases stand for that proposition. And they cited two cases from South Carolina District Court, federal court again. One is the George Sink case, the one involving George Sink and his son. And the other is a case called OCala vs. Hernandez. And another is a case from the State Supreme Court called Strategic Resources. I've reviewed those cases multiple times. Those cases don't say that. In fact, if we look at OCala vs. Hernandez and Strategic Resources, the words status quo aren't even there.

The law in South Carolina has always been that supersedeas relief should be granted to preserve the status quo. Status quo means one thing, it means the last uncontested status between the parties before the controversy. Trident HCA by citing law out of jurisdiction is trying to change the meaning of status quo.

And also, Trident HCA's arguments don't comport with the law in South Carolina. If we look at Rule 62(c), Rule 62(c) envisions the scenario. They say, we know circuit court may decide that it's going to deny a motion for temporary injunction, but still grant supersedeas relief. What Trident HCA seems to be arguing is that if you lose a motion for temporary injunction, you can't have supersedeas relief. Well, that's not Rule 62, that's not our case law.

There's a case called Sea Pines Association for the Protection of Wildlife vs. South Carolina Department of Natural Resources. 2001 case from the State Supreme Court. In that case, the Sea Pines Group, they moved for a temporary injunction and they lost. They moved for a petition of supersedeas and they won. Under Trident HCA's understanding of what the law is, that would be impossible.

So, again, I talked about this, the overarching reasons why -- or the things the Court should consider in determining whether to grant supersedeas relief is status quo, preserve the fruits of the meritorious appeal. There

are four factors. I'm sure the Court is familiar with them and I'll hit them quickly. The first is irreparable harm. Second is likelihood of success on the merits. Third is the prejudice to the other side. Is there going to be prejudice if this supersedeas relief is granted? And fourth is public interest.

So when we talk about irreparable harm, again, it's a situation where Trident HCA has told us what they're going to do with our materials if the Court doesn't grant this ruling. They're going to use them. It's going to devour the fruits of our meritorious appeal during the pendency of this case and we would submit to the Court that's irreparable harm.

In terms of likelihood of success, so we have to make a prima facie showing in order to satisfy this element. Once that prima facie showing is made, then the Court should impose the injunction. And we're talking about two separate causes of action: South Carolina Trade Secrets Act and Breach of Fiduciary Duty. South Carolina Trade Secret Act just means that, you know, there's a secret and the company has engaged in reasonable efforts to protect that secret. We talked about that earlier, all the things that MUSC has done to protect those materials from disclosure. Obviously, this thing has value. I mean, Trident HCA is showing us it has value by how hard they're fighting to try to keep the

materials.

In terms of breach of fiduciary duty, so the law on that -- and this is the Lowns (ph) Products case, if you're an employee and you take a company's materials and you take them over to the new employer, it's not just the employees who are liable for breach of fiduciary duty, there's joint and several liability on the part of the employer if the employer uses those materials. So that's likelihood of success.

In terms of, you know, prejudice to the other side. I think this is an important factor. What's the prejudice to Trident HCA if the Court grants this relief? I mean, this is stuff they didn't create. This is stuff they never had until the status quo was altered. What's the prejudice to them if the Court grants this relief?

And number four is public interest. You know, this is a situation of are we going to reward innovation, are we going to reward development, are we going to reward those people playing by the rules? Or are we going to reward misappropriation, are we going to reward those people who take misappropriated documents and use them?

I know Your Honor knows this, but businesses are shrewd. They care about money and, oftentimes, money alone. If they think it's going to be cheaper to take someone else's stolen materials and use them and pay damages later,

they'll do it.

And finally, you know, with (inaudible) tests, you get kind of lost in the weeds. You can't see the forest for the trees. Sometimes it's good if you just sort of reset and think about well, why are we here? I mean, this is equity. We're talking about injunction. We're talking about supersedeas. Equity exist to right wrongs. And what's going on here is wrong. Trident HCA has a competitor's materials. They didn't create that. The way they came into possession of these materials is wrong. They got it through employee theft.

And, Your Honor, there are two other red heron arguments that Trident makes that I want to spend just a brief moment on. They make this argument about time, that MUSC somehow has delayed in seeking this supersedeas relief. I mean, MUSC has met ever deadline it's been required to meet in order to be here today. They've moved as expeditiously as possible. You know, we all know what's going on here in terms of what we have to do from a Rule 59(e) perspective to kind of preserve our arguments. All those things just take time. But MUSC has done what it's supposed to do.

And finally, on Page 11 of the memorandum, Trident HCA says well, if the Court would grant this relief, then it would completely moot the appeal. That's not the way

supersedeas works, right? The appeal would be very much alive. All it would do is protect our materials during the pendency of appeal. We can go slow down the appeal and however that shakes out, it shakes out, but, at least, we'll have our materials that will be protected.

Your Honor, I appreciate your attention. And just in closing, I would say, we're asking the Court to do two things: Return our confidential and proprietary materials and order them not to use them while the appeal is pending. Thank you.

THE COURT: Mr. Werner, happy to hear from you.

MR. WERNER: Thank you, Judge. First, let me begin with one simple thing. The request here again, Judge, they seek relief against both HCA and Trident. Those are two different entities. As the Court probably knows from the time that HCA responded, HCA moved to have the case dismissed against it based on the lack of personal jurisdiction. That was scheduled to be heard previously one time and it was -- the Defendants asked that it be continued, carried over and they said they were unavailable, so that motion has never been heard. When the motion was filed, however, the prima facie case showing that there is no personal jurisdiction over HCA was filed. We believe we established that.

It is the Plaintiffs' burden before any relief can be

given against a party to establish that that party is subject to the jurisdiction of this Court. They have never done that. So it would be absolutely improper to give any relief pursuant to this motion against HCA.

Now, let's talk about Trident. While counsel began his argument by telling you he's not here to rehash, did you hear anything new, Judge, from what you've heard and seen twice before? All they have done is rehash the same argument asking for different results. We've cited to Your Honor the case law, South Carolina case law which says that is not a sufficient basis to be entitled to relief under Rule 62. All they're doing is repeating the same arguments asking for a different result.

This is, essentially, their fourth bite at this same apple. They filed a motion for temporary injunction. Your Honor denied it. They asked that you reconsider that and change your decision, you denied it. They filed an appeal seeking appellate relief from those two orders. That's pending. They now come back and they file this and they ask you to take this away from the Court of Appeals.

Because, Your Honor, that's what happening here. They were denied the injunctive relief. They filed an appeal seeking that to be reviewed and changed by the Court of Appeals. But now, they want to have that injunctive relief so that there is -- the question presented to the Court of

Appeals is flipped on its ear if you were to grant this relief for them.

Now, something else is interesting. First of all, I know that Your Honor knows counsel argued to you there's nothing in South Carolina that has dealt with this. Well, that's covered in our rules. That's covered by prior case law. When you are presented with an argument under our rules of civil procedure where the rule is the same as the federal rule, which is the case here under Rule 62, and there isn't any existing precedent, you are, in fact, to look to the decisions of the federal courts. So it's entirely appropriate and, in fact, you have been instructed by those rules and prior decisions to look at the precedent of the federal courts when there is no existing precedent here to help you to resolve those questions.

So the second thing, though, that is interesting is, you recall in their motion, they tied this motion to both Rule 62(c) and to appellate court Rule 241. Now, they try to argue to you that oh, well, just because the federal courts have consistently said that the status quo that matters here is the status quo at the time the appeal was filed, don't pay any attention to that. Well, Rule 241 says the same thing. Rule 241 says that the only way you grant relief under 241, which is similar, basically, it's the same ultimate result, is if it is necessary to preserve the

jurisdiction of the appeal or to prevent issues from being rendered moot.

So our own appellate court Rule 241 dealing with the same ultimate subject also guides the Court in the fact that what matters here is the issue as it existed, the status quo as it existed at the time of the appeal, not at the beginning of this case. They argued that status quo to you and lost twice.

So regardless of the flowers now being planted around the same vase, all they want you to do is to say oh, well, you know what, on your third effort, I'm going to give you a different result and I'm going to change completely now the issue as it exist in connection with this appeal. Because they've got their relief. When you grant that so-called supersedeas, it's just the same question, they just want the same injunction you've denied twice, the issue on appeal is essentially moot.

Now, if I can, let me just try to quickly deal with a few of the other issues. First of all, Your Honor, I'm amused at the efforts to read the language and then come back and paraphrase it and suggest it says something different. These physician settlement agreements very clearly say all these physicians shall do is refrain from using any of the documents or records, specifically, records. It doesn't say refrain from using the information

that may be in them. It doesn't say refrain from using your knowledge of all that information.

So they want to make a settlement with these physicians, which would allow these physicians -- they admitted in their own affidavits submitted to you earlier that it was the physicians who prepared and created these cards and these lists. Those physicians have that knowledge. That admission recognizes that the physicians have that knowledge. So a physician likely doesn't need those cards or those lists.

They want to free them up from it by having given them a release and now they want to tie Trident's hands from an undefined, quote, use of the information. Not of the cards, of the information. That doesn't even past the test of a Rule 65 injunction. You can't give injunctive relief which is undefined.

The other thing that I, again, find amusing, particularly, I guess, since I wrote it, counsel, I guess pretends to be clairvoyant and to tell you what Trident is doing or intends to do with this information. He's provided you no evidence of what they're doing with it. And he sure as heck doesn't know what they intend to do with it. Nowhere has Trident said that it is or intends to give that information, to give those cards, to give those lists to anyone. And it has never been established that that has

happened.

You were sort of asked a rhetorical question, well, why do they want to keep this stuff? Unfortunately, Judge, I have to tell you, one reason why you saw during the initial hearing, you were handed up as exhibits copies of -- so-called copies of some of these lists and cards in question, which suddenly had at the bottom of them confidential designation stamps, which counsel did ultimately admit was never on them when they were, in fact, transmitted to Trident.

If a defendant is forced to turn over so that it can be destroyed in the meantime or hidden from the Court when the ultimate decision is made, the very fundamental nature of their case, whether there is a justification for finding that this stuff meets the test of being a trade secret or confidential or proprietary information in the first place, then just let every plaintiff just declare their own relief. There's no judging.

Frankly, their position and their argument is preposterous. They want to tell you that Trident would take eight to ten years to do this. Well, Your Honor, as you know, Trident is a hospital within the broader HCA framework. HCA has lots of hospitals around and they have lots of preexisting head and neck units like this one. They've got one in Savannah. They had that before this ever

came up. They've got a huge one in Colorado. The idea that they needed equipment lists in order to set up an HNO operation is ridiculous.

You also -- they talk about it. They keep focusing on the lists and the cards, but they talk about financial information. Well, they made an allegation that the physicians had attempted to get that information. But if you look at the exhibits they gave you back at the beginning, in them is the e-mail showing that MUSC never gave it to them. They never got it. And they sure as heck never gave it to Trident.

So they make up this list of things that they want to try to justify. They never established that they meet the test of being protectable documents or information. But oh, we say it, Judge, so it's true. You just have to take our word. Well, you don't. They had the chance to prove it to you twice and you issued your decision saying they hadn't done that.

Now, aside from this thing being now a question of the status quo at the time of the appeal, there's another thing which they have never -- didn't talk to you about it today either. We cited you the law. To win now, they've got to prove to you that they have a likelihood of success not on the argument that you've already said they didn't succeed on twice, but they've got to prove that their likelihood of

success is not from day one, it is a likelihood of success on appeal.

Now, what's the status -- what's the standard for that appellate review? An abuse of discretion. Unless they can establish that you abused your discretion, which our courts have said means, basically, two things: That you either made an absolute error of law or that you had absolutely no basis to render the decisions you've rendered twice. So for you now to give them a different result, you've got to conclude that you previously abused your discretion, that you previously issued two orders that you had no basis, in fact, to issue and that you were wrong on the law.

You did have a basis, Your Honor, and you weren't wrong on the law. And that's what they would have to show now to get this. They can't go back and just say well, Judge, we're going to win because we said we're going to win and you were wrong twice about it. That doesn't get them anywhere to establish a right to Rule 62(c) relief.

We've made all of the arguments. We've cited the cases in the brief. I really hesitate to keep doing this because, again, it's the same. What they're doing is trying to argue the same thing that they argued to you twice and failed.

Fundamentally, the issue here is that they simply want a different result so that they obtain relief that they failed to get and that the appellate court is not likely to

give to them. And they want that relief. They've talked to you about oh, the appellate process is slow. Well, it may be, but -- so now, I guess what they're saying is let's now give us the relief that we failed to earn twice before during some long process and Trident now will have its hands tied.

And remember, Judge, its hands being tied now is a very different world because, as you know, since November, this work has been ongoing. I mean, these physicians, they didn't have restrictions. They made buyouts of their -- two of them that had a buyout of their covenants bought out. That's all recognized in their settlement agreement. They're performing surgery. They're doing work. So you're shutting down an existing operation. It's not that you're preventing one from going forward. You are shutting down the care of patients if you impose the relief they're seeking.

Two quick things. They cite to you the Milliken case. The Milliken case is absolutely and utterly distinguishable. The Milliken case involved an assignment of intellectual rights in their employment contracts. They haven't cited to you, and I will tell you, you can read their manual, it doesn't exist that any such contractural right was existing between MUSC and the physicians in this case. So what they want to argue for broad restrictions on these physicians

does not exist in this case. Very distinguishable.

Similarly, they cite to Sea Pines case. Sea Pines case, admittedly, is a little strange, but it sure as heck isn't this case. In Sea Pines, there was an effort to get a temporary injunction and it was denied. We weren't talking about an appeal process there. What we were talking about was they simply went -- the plaintiffs in that case went to the Court of Appeals seeking supersedeas pending going back to the trial. And they got a judge at the Court of Appeals to give it to them. Ultimately, the case was dismissed and the Supreme Court affirmed all of that.

So Sea Pines -- and Sea Pines was also fundamentally different in that the argument even made about Sea Pines was look, this is utterly irreversible, Judge, because what's going to happen is these deer are going to be killed in the meantime. It is final. There's no analysis of whether or not they have a legal right, whether they can be made whole by money damages, et cetera after a trial. Completely different case.

Your Honor, I'm tempted to go on about a lot of the stuff, but I know you've already seen briefings on this now three times. For now, I will rest on what we have submitted to you and the fact that you twice before dealt with this properly.

THE COURT: Okay. And for purposes of the record, the

briefs that you've submitted which you filed with the court are obviously incorporated fully for purposes of the record today on your appeal.

Happy to hear a brief response from Mr. Gilliam if you would like at this time.

MR. GILLIAM: So Trident HCA, they talk out of both sides of their mouth, right? Like, on the one hand, if you issue this temporary injunction, you'd be tying their hands. You'd be enjoining the practice of medicine. On the other hand, these physicians could create these materials. They're all in their head. And on the other, Trident HCA is so sophisticated, they don't MUSC's stuff. Well, if that's the case, then why are they fighting so hard to keep it. It just doesn't make any sense.

And, you know, this idea that this is like a fourth bite of the apple, and I think that's been a talking point that HCA has employed frequently, they don't seem to appreciate the difference in procedure or that the procedural rules allow for this relief to be granted in certain circumstances. That's all that we're asking the Court to do. We're not taking another bite at the apple. And even the Rule 59(e) motion, that's not another bite at the apple, that's just doing what you're supposed to do from a practice perspective.

As it relates to HCA and the jurisdictional issue, to

the extent -- the Court should impose the injunction. And to the extent, you know, they handled their motion to dismiss, it wouldn't be binding on them if that motion to dismiss were to be granted.

And again, what I hear from HCA is engaging in this type of misdirection. They talk about well, they can use what's in their head. We've never said they couldn't. What we said is they cannot use our materials. So what we've asked the Court to do is say Court, please order them to return our materials. And if the Court granted that relief, that would be the same relief that the individual defendants agreed to in the settlement agreement, to refrain from using and to destroy that information.

And, you know, counsel is right, I'm not clairvoyant. I will submit that to the Court, but I can read. And I can read what Trident HCA said. And what they said in their memorandum of law is false. They said that the physicians only had one obligation, and that obligation was to destroy. They said specifically that they never agreed they wouldn't use that information. They said specifically that their use of that information remained unrestricted.

This is a classic case for supersedeas relief because Trident HCA is going to devour the fruits of the meritorious appeal while this appeal is pending. Whether we're right or wrong on appeal is a separate issue. They're taking away

our competitive advantage because they're using our materials on appeal. And for that reason, we'd ask the Court to grant this relief.

And as it relates to the likelihood of success of the merits, it's a situation again where Trident HCA just isn't correct on the law. This is an equitable cause of action. It's an equitable standard. The appellate court is going to be able to take its own view of the evidence.

So, Your Honor, I really appreciate the Court's attention to these matters and we would respectfully request the Court enter the relief that's been requested.

THE COURT: All right. I appreciate that. I'll certainly look at the cases cited in your briefs a little bit more closely. You brought up excellent points, both sides, obviously. You know, it's an interesting issue as it relates to public policy.

You know, this is different than a Milliken case and this is different than a DNR case. This is a case that is affecting healthcare to the public, which, of course, this Court must take into consideration. Yes, you mentioned shrewd business practices and all of that and that's wonderful, but the fact of the matter remains that in these healthcare areas, the direct recipient ultimately is those in need of healthcare and good healthcare, and the best healthcare available.

So this is distinguishable in a lot of ways from cases involving textile mills or protection of wildlife. Not that those matters aren't important as well, but, obviously, the Court must view these healthcare cases through a slightly different lens for obvious public policy purposes.

So with that in mind, as I stated, I will take a closer look at your briefs, all the cases cited and I will request a proposed order from the appropriate party within the next five to seven days.

MR. WERNER: Thank you, Your Honor.

MR. GILLIAM: Thank you.

THE COURT: Thank y'all. Take care.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

June 30, 2022

Penny M. Johnson

Penny M. Johnson
Court Reporter III

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,	)	Civil Action No. _____
Plaintiffs,	)	
v.	)	**MOTION FOR TEMPORARY INJUNCTION**
HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA,	)	
Defendants.	)	

The Plaintiffs Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") respectfully submit their Motion for Temporary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure against HCA Healthcare, Inc. ("HCA"), Trident Medical Center, LLC ("Trident"), Terry A. Day ("Day"), Betsy Kay Davis ("Davis"), Joshua D. Hornig ("Hornig"), Eric J. Lentsch ("Lentsch"), David M. Neskey ("Neskey") and Anand K. Sharma ("Sharma") (collectively as "Defendants"). Importantly, MUSC requests a hearing on this Motion for Preliminary Injunction **on or before December 1, 2021**, as Defendant physicians will no longer be employed by MUSC as of this date, and the risk of harm to MUSC exponentially increases with their departure and transition to competitor Defendants Trident and HCA.

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The individual Defendants have been employed at MUSC in the Department of Otolaryngology, Head and Neck Oncology Division of MUSC ("HNO") and have served as members of the UMA for a significant number of years. Beginning in July and August, 2021, the individual Defendants began submitting their resignations *en masse*, and it became known that they were transitioning to MUSC's competitors, Defendants Trident and HCA. The individual Defendants thereafter began obtaining Plaintiffs' confidential and proprietary information to take and utilize during their employment with Defendants Trident and HCA. In addition, Defendant Neskey, Program Director of the Head and Neck Fellowship, began to attempt to take MUSC's current Fellows with him to Defendants Trident and HCA and sabotage MUSC's HNO Fellowship Training Program. Lastly, in violation of their duties of loyalty as employees of MUSC, Defendants have recruited and solicited numerous employees from MUSC and UMA to work for Defendants Trident and HCA. The individual Defendants have committed these unlawful acts during their employment with Plaintiff MUSC and as members of UMA. Plaintiffs incorporate by reference all of the allegations in the Complaint filed herein and all facts as asserted in the affidavits attached to this motion.

INTRODUCTION

MUSC's Otolaryngology Department, which includes the HNO Division, is a prestigious Integrated Center of Clinical Excellence ("ICCE").[1] MUSC has expended millions of dollars of resources over the last two decades to build its HNO Division.[2] Along the way, MUSC created detailed and proprietary methods for complex patient procedures, which have been taken by the individual Defendants and given to Trident and HCA. In the time period leading up to their

[1] Integrated Centers of Clinical Excellence are organizational units of MUSC.

[2] (See Affidavit of Patrick J. Crawley).

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departure from MUSC, the individual Defendants have gathered MUSC's confidential and proprietary information (procedure lists, procedure preference cards, instrument lists, and billing and revenue information) and provided it to Trident and HCA for the purpose of using it when they begin their employment at Trident and HCA, in direct competition with Plaintiffs.

All unlawful actions by the individual Defendants have been engaged in during their employment with MUSC and while members of the UMA. In addition to taking Plaintiffs' confidential and proprietary information, the individual Defendants (while employed by MUSC), and in conjunction with Defendants Trident and HCA, have recruited and solicited numerous HNO Division employees to join them in their transition to HCA and Trident. Defendants Neskey and Day are even attempting to sabotage MUSC's accredited Head and Neck Fellowship Program by unauthorized communications with the accrediting body and solicitation of the current fellows.

Temporary injunctive relief is critical to preserve Plaintiffs' confidential and proprietary property before the individual Defendants transition their employment to MUSC's competitors, Defendants Trident and HCA, and before the Defendants use it to compete with MUSC. To the extent that the individual Defendants have already provided Plaintiffs' confidential and proprietary property to Defendants Trident and HCA, the return of such property is imperative while this Court decides the merits of Plaintiffs' causes of action, and Defendants must be enjoined from further attempts to interfere with MUSC's HNO Fellowship Program.

STANDARD FOR TEMPORARY INJUNCTION

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 366; 709 S.E.2d 639, 642 (2011). The moving party must allege sufficient facts to demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Id.*

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Plaintiffs must establish that (1) they will suffer immediate, irreparable harm without the injunction; (2) they have a likelihood of success on the merits; and (3) they have no adequate remedy at law. *Id.* In evaluating whether Plaintiffs are entitled to a preliminary injunction, the court "must examine the merits of the underlying case only to the extent necessary to determine whether [Plaintiffs have] made a sufficient prima facie showing of entitlement to relief." *Id.* at 367, 709 S.E.2d at 642. Whether to grant a preliminary injunction is within the sound discretion of the trial court, and will be upheld unless clearly erroneous. *Id.* at 366, 709 S.E.2d at 642.

PLAINTIFFS ARE ENTITLED TO A TEMPORARY INJUNCTION.

I. Plaintiffs are likely to succeed on the merits.

This element of the preliminary injunction test does not require a litigant to "prove an absolute right"; rather, it **"need only present 'a fair question to raise as to the existence of such a right."** *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (emphasis added) (quoting *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912)), holding modified on other grounds by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). As long as a litigant can make a "*prima facie* showing," the injunction should be issued. *Id.*

A. Plaintiffs are likely to succeed in their action regarding Defendants' misappropriation of trade secrets.

As set forth in the Complaint and as shown by the supporting affidavits of Dr. Patrick Cawley, Dean Raymond DuBois and Timothy Brendle, Defendants have taken highly confidential, proprietary information that is of great value to Plaintiffs and which constitutes trade secrets within the meaning of the South Carolina Trade Secrets Act. As further set forth in the Complaint and as shown by the supporting affidavits, the misappropriation of these trade secrets is causing and will continue to cause irreparable harm to Plaintiffs that money cannot fix.

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B. MUSC is likely to succeed in its action regarding the unlawful interference with its Head and Neck Fellowship Program.

MUSC's Head and Neck Fellowship Program is one of less than fifty programs throughout the country accredited by the American Head and Neck Society ("AHNS"). The accreditation of MUSC's Head and Neck Fellowship program was accomplished by MUSC through years of preparation and significant financial investment. Defendants HCA and Trident do not have an AHNS-accredited fellowship program. [3]

As set forth in the Complaint and as shown by the supporting affidavits of Dr. Cawley and Dean DuBois, Defendant Neskey, Director of the Head & Neck Oncology Fellowship Program, has taken various actions to interfere with and damage MUSC's Fellowship Program, including engaging in unauthorized communications with ANHS, the accrediting body for the fellowship program.

C. Plaintiffs are likely to succeed in their action regarding the solicitation of their employees.

As stated previously, Defendant physicians (while employed by MUSC) and together with HCA, have recruited and solicited numerous HNO Division employees away from MUSC and UMA to work for Defendants Trident and HCA. These actions by the individual Defendants were clearly committed during their employment with MUSC and while members of the UMA and constitute a breach of the duty of loyalty they owed to MUSC and UMA. *See Berry v. Goodyear Tire & Rubber*, 270 S.C. 489, 242 S.E.2d 551 (1978). *See also Sonoco Prods. Co. v. Güven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at *1 (D.S.C. Jan. 8, 2015) (unreported) (finding that an employee's solicitation of its employers' employees in forming competitor business could constitute a breach of loyalty to employer).

[3] *See* Affidavit of Patrick J. Crawley and Affidavit of Raymond N. DuBois.

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II. Plaintiffs will face permanent and irreparable harm without issuance of an injunction.

The individual Defendants are in possession of MUSC's confidential, proprietary information. Plaintiffs' confidential and proprietary information has been misappropriated by Defendants and should be immediately returned, together with any and all copies, pictures, photographs, mock-ups, and any other memorialization of the information by any and all means. In addition, MUSC's Head and Neck Fellowship Program faces potential irreparable harm without issuance of this requested injunctive relief.

III. Plaintiffs have no adequate remedy at law and the equities favor the granting of temporary injunctive relief.

Plaintiffs have no adequate remedy at law. The only way to safeguard Plaintiffs' rights to their confidential and proprietary information during this litigation is to grant preliminary injunctive relief requiring Defendants to return the information and to cease utilization of the information. In addition, a balance of the benefit in granting the injunction against the potential inconvenience and damage to the Defendants certainly weighs in favor of Plaintiffs. MUSC and UMA's employees, their trade secrets, and MUSC's Head and Neck Fellowship Program are being taken by Defendants Trident and HCA as HCA is attempting to build its own Head and Neck program using Plaintiffs' confidential and proprietary information.

Moreover and most importantly, the public interest weighs heavily in favor of granting the injunction. MUSC is a public academic health system, as well as an educational and research institution, whose mission is education, research and clinical care to preserve and optimize human life in South Carolina and beyond. UMA is MUSC's faculty practice plan, which is a non-profit 501(c)(3), organized exclusively for charitable purposes. In contrast, Defendant Trident is a private, for-profit healthcare facility and HCA is a publicly traded for-profit corporation, with obligations to generate profits for its shareholders. Accordingly, the balance of equities tips in

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favor of granting the temporary injunction to protect Plaintiffs' proprietary and confidential information from being taken by their for-profit competitors, Defendants Trident and HCA during this litigation.

In summary, Plaintiffs seek preliminary injunctive relief in accordance with the South Carolina Trade Secrets Act, and the common law of South Carolina and request this Court to execute an Order which:

(1) prohibits Defendants from further utilizing Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data;

(2) requires the return of all confidential and proprietary information taken, including, but not limited to instrument lists, patient lists, physician preference cards, and financial data;

(3) prohibits Defendants from billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards, and financial data;

(4) prohibits Defendants from further interfering with MUSC's Fellowship Program in any way or recruiting any MUSC Fellow;

(5) prohibits Defendants from contacting any fellowship accreditation bodies regarding MUSC; and

(6) prohibits Defendants from further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA.

CONCLUSION

For the above reasons, as well as those set forth in the supporting affidavits, any memoranda later submitted, and such further evidence and argument presented at any hearing, the Court should enter a temporary injunction to provide Plaintiffs with the foregoing relief.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF. PATRICK J. CAWLEY

I, Patrick J. Cawley, M.D., MHM, FACHE, being duly sworn deposes and says:

I. Background about Dr. Cawley

1. I am of sound mind and body, over the age of eighteen (18), and competent to offer testimony.

2. I offer this affidavit based upon my personal knowledge and based upon information and records maintained by the Medical University of South Carolina ("MUSC").

3. I am currently the Chief Executive Officer of MUSC Health and Vice-President for Health Affairs of MUSC, and Associate Professor of Medicine.

4. I started working at MUSC in 2003 as the Associate Chief Medical Officer. In 2006, I became the Chief Medical Officer of the Medical University Hospital Authority ("MUHA"), which operates hospitals, clinics and other health care and related facilities as set forth

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in section 59-123-60 of the South Carolina Code of Laws. In 2013, I became the Chief Executive Officer of MUSC Health.

5. I am a Member of the University Medical Associates ("UMA"), the Faculty Practice Plan of MUSC, and I serve on UMA's Board of Directors and its Executive Committee. The UMA is a South Carolina not-for-profit corporation pursuant to Title 33 Chapter 11 of the South Carolina Code of Laws.

II. MUSC's Head & Neck Oncology Division

6. MUSC has provided specialty care in Otolaryngology (colloquially known as "ear, nose, and throat") to South Carolina citizens for over a century. Over the past twenty (20) years, the Department of Otolaryngology has maintained national recognition, including ranking in the top ten (10) departments in its specialty in National Institute of Health ("NIH") research funding, offering a top ten (10) residency program, and achieving U.S. News and World Report rankings in the top fifteen (15) ear, nose, and throat services in the country. The Department's faculty conduct education, research, and clinical services in nine (9) different subspecialties, including Head and Neck Oncology.

7. MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") is one of the largest programs in the country devoted to the care of the head and neck cancer patient. It was developed and has continuously evolved since the current Department Chair, Paul Lambert, M.D., and defendant physician Day arrived at MUSC in 1999. In 2015, MUSC opened the Wendy and Keith Wellin Head and Neck Oncology Center after receiving a generous donation from the Wellin family. The Center is a partner with MUSC Hollings Cancer Center ("the Center"), the only NCI-designated cancer center in South Carolina, and the Department contributed $500,000 to the capital needed to establish a state-of-the-art center.

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8. At the Center, a comprehensive multi-disciplinary team comprised of surgeons, radiation oncologists, medical oncologists, maxillofacial prosthodontists, speech and swallowing specialists, nutritionists, and social workers have provided point-of-service, coordinated care from an initial patient encounter through treatment and survivorship. Overall, 750 to 800 new patients with head and neck cancer are evaluated at MUSC annually.

9. Prior to their effective resignation dates, each of the defendant physicians in this action were long-term faculty members and medical care providers, working in MUSC's HNO Division. In addition, each of the defendant physicians in this action were, at all relevant times, Members of the UMA.

10. Defendant Davis joined the Department of Otolaryngology in 1995. After completing his own fellowship at MUSC in 2005, Defendant Hornig joined the Division. Defendant Lentsch joined the Division in 2006. Defendant Neskey joined the Division in 2014. Defendant Sharma joined the Department of Radiation Oncology in 2001, and has held a faculty appointment in the Department of Otolaryngology since 2003. Over time, MUSC developed and nurtured a comprehensive team of clinicians to furnish the highest levels of care to the hundreds of patients MUSC treats annually. The complete list of the team members providing this treatment to patients on behalf of MUSC is attached hereto as **Exhibit #3.**

11. With certain exceptions,[1] the individuals reflected in **Exhibit #3** are current employees of MUSC as of the date of this affidavit. Effective December 1, 2021, the defendant physicians will no longer be a part of this team, as they have resigned from MUSC, and they will,

[1] Sara Jasper, Caitlin Mengler, Kiely St. Germain, and Hannah Feltner all resigned and left MUSC during October 2021 and, upon information and belief, are or will be working at Trident Medical Center in North Charleston for HCA.

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upon information and belief, work for Trident Medical Center in North Charleston, which is operated by defendant HCA Healthcare, Inc. ("HCA").

12. Unlike MUSC, which is a public academic health system with a tri-partite mission of education, research, and providing clinical excellence to all citizens of South Carolina and beyond, Trident Medical Center is a private for-profit healthcare facility and its parent company, HCA, is a publicly-traded corporation obligated to earn profits for its shareholders.

13. Historically, Trident Medical Center has not performed the complex type of head and neck procedures at its North Charleston location that MUSC's HNO Division performs. The types of medical procedures performed by MUSC's HNO Division are long, multi-phase and complicated procedures, often lasting up to ten (10) to fifteen (15) hours.

14. Upon information and belief, Trident Medical Center does not have the facilities, equipment, manpower, and know-how to provide patients with the level of care that MUSC's HNO Division provides. Notably, simultaneously with the defendant physicians' resignations from MUSC, Trident Medical Center filed a Certificate of Need Application, attached hereto as **Exhibit #4**, to expand its facility in an attempt to achieve the capability to perform the complex type of head and neck procedures at its North Charleston location. In addition, even if Trident's facilities are currently sufficient to support a ten (10) to fifteen (15) hour surgery, but for defendant HCA's wholesale poaching of MUSC's HNO Division's valuable resources and know-how, Trident would be incapable of providing any quality head and neck oncology surgical services for many years.

15. MUSC built its HNO Division over two decades and developed the processes to perform these operations over the course of the last two decades. MUSC did so not with an eye not towards maximizing revenue, but with the goal of fulfilling its institutional and statutory

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mission, which is to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

III. MUSC's Confidential & Proprietary Information

16. During the last two decades, when MUSC has been building its HNO Division, it has identified and purchased the equipment necessary to perform these procedures, identified the team members necessary to perform these procedures, and developed physician preference cards and instrument lists to perform these procedures.

17. MUSC's physician preference cards are catalogues of specific tools, supplies, and room setup that a surgeon prefers for a particular type of surgery. MUSC's physician preference cards are confidential and proprietary information belonging to MUSC, not to any individual employee.

18. MUSC's instrument lists identify the instruments specific surgeons need to perform certain procedures. MUSC's instrument lists are confidential and proprietary information belonging to MUSC, not to any individual employee.

19. MUSC's physician preference cards and instrument lists enable the team members to perform the complicated head and neck procedures MUSC's HNO Division has historically performed.

20. MUSC's physician preference cards and instrument lists are not disclosed to the public and are not available in the public domain.

21. MUSC maintains policies and procedures to protect its confidential and proprietary information from disclosure to unauthorized recipients. In addition, MUSC limits access to its confidential and proprietary information. MUSC only allows those persons to access such

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information who have a legitimate need to do so. To the extent one attempts to access such information remotely, MUSC uses a two-factor authentication system.

22. An example of the confidentiality obligations imposed on MUSC's employees can be found in the Code of Conduct, which is part of the MUSC Faculty Handbook. The Code of Conduct expressly states that "[n]o employee shall disclose confidential information or use such information for his or her personal benefit." **Exhibit #5**.

23. While still employed by MUSC but after notifying MUSC of their intent to resign, upon information and belief, defendant physicians Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC, Jamie Wilsgard, to send physician preference cards from MUSC to HCA. The email correspondence where Ms. Wilsgard transmitted these physician cards to HCA is identified as **Exhibit #6**[2].

24. Defendant physicians Day, Hornig, Lentsch, and Neskey did not have the authority to transmit MUSC's physician preference cards to HCA, and by doing so, defendant physicians Day, Hornig, Lentsch, and Neskey violated MUSC's policies and procedures.

25. While still employed by MUSC but after notifying MUSC of his intent to resign, defendant physician Hornig obtained MUSC's instrument list and sent this information to HCA. Defendant Hornig's transmission of this information to HCA is reflected in **Exhibit #7**. [3]

26. Upon information and belief, Trident Medical Center never had the physician preference cards and instrument lists necessary to enable defendant physicians (or other

[2] By its very nature, the part of Exhibit #6 that contains the physician preference cards is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

[3] The email from defendant physician Hornig has been filed with the court, but the instrument list attached to the email is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

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physicians) to quickly develop a facility, processes, and procedures to efficiently perform the type of head and neck procedures that have been historically performed by and at MUSC.

27. Without the physician preference cards and instrument lists, the defendant physicians would not be able to quickly establish the facilities, processes, and procedures to perform the complicated head and neck procedures at Trident Medical Center in North Charleston that the team members have historically performed at MUSC.

28. MUSC's patient lists are also confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

29. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. Exhibit #8.

30. The amount of revenue generated by MUSC and the physician's relative value unit or "RVU" are confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

31. Approximately six (6) months prior to announcing his resignation from MUSC, defendant physician Day obtained his RVU and salary for the past ten (10) years. In addition, defendant physician Day obtained this information for defendant physicians Sharma, Lentsch, and Hornig as well. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #9**.

32. MUSC's case logs are also confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

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33. After resigning from MUSC, defendant physician Day obtained his case logs for fiscal years 2019, 2020, and 2021. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #10**.

34. In addition, defendants Davis and Neskey obtained confidential information concerning MUSC's residents and fellows as evidenced by **Exhibit #14** and **Exhibit #15** .

35. In **Exhibit #14**, defendant Davis obtained information about MUSC's residents' salaries.

36. In Exhibit #15, defendant Neskey obtained the signed contracts for the incoming fellows in MUSC's Fellowship Program.

37. The information reflected in **Exhibits #14 and #15** are confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

IV. Defendants' Plan to Leave MUSC for HCA and to Solicit Others

38. The documents and emails located on the defendant physicians' MUSC.edu email show the defendant physicians' orchestrated plan to leave MUSC *en masse* and attempt to transport and deliver an entire practice to HCA:

a. On February 11, 2021, defendants Day and Neskey are invited by HCA agent Dax Kurbegov to meet in Nashville following defendant Neskey's "productive ongoing dialogues with the South Atlantic team . . . ." **Exhibit #16**. In the email, Mr. Kurbegov states to defendant Neskey, "Terry Day may have already spoken to you about this opportunity."

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b. On March 4, 2021, defendants Day, Sharma, and Davis communicate regarding "discussions around non-compete and legal concerns with future plans." **Exhibit #17**.

c. On June 2, 2021, defendant Day confirms HCA meeting to finalize contracts with HCA and discuss departure from MUSC. **Exhibit #18**.

d. On June 30, 2021, defendant Sharma drafts list of questions related to timing of giving MUSC notice of the defendants' plans to resign, and buy-out of non-compete agreements. **Exhibit #19**.

e. On June 14, 2021, defendant Lentsch provides copy of his Employment Contract with HCA to First National Bank. **Exhibit #20**.

f. On August 19, 2021, defendant Day resigns. **Exhibit #21**.

g. On August 24, 2021, HCA Onboarding Administration emails Dr. Brad W. Neville (part of the oral pathology as reflected in **Exhibit #3**) to perform background check prior to HCA's hiring of Dr. Neville. **Exhibit #22**.

h. On August 26, 2021, HCA Physician Services Group schedules meeting with defendant Day and Dr. Neville. **Exhibit #23**.

i. On August 27, 2021, defendant Neskey resigns. **Exhibit #24**.

j. On August 31, 2021, defendant Hornig resigns. **Exhibit #25**.

k. On August 31, 2021, defendant Lentsch asks MUSC administrative assistant to put his resignation on letterhead. **Exhibit #26**.

l. On August 29, 2021, defendant Davis resigns. **Exhibit #27**.

m. On September 1, 2021, defendant Neskey's counsel asks amount of Neskey's non-compete buy-out. **Exhibit #28**.

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n. On September 2, 2021, defendant Day obtains composite pictures of MUSC ENT Residents 2021-22. **Exhibit #29**.

o. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. **Exhibit #8**.

p. On September 9, 2021, defendant Day obtains his case logs 2019-21 from MUSC personnel. **Exhibit #10**.

q. On September 21, 2021, Acute Care Nurse Practitioner Sara Jasper resigns. **Exhibit #30**. Ms. Jasper is part of the team reflected in **Exhibit #3**.

r. On September 24, 2021, HCA contacts Kym Kittle, Registered Nurse for the Operating Room, for a position at HCA. **Exhibit #31**. Ms. Kittle is part of the team reflected in **Exhibit #3**.

s. On September 26, 2021, defendant Sharma enters into Recruiting Agreement with HCA to recruit a physician for HCA. **Exhibit #32**. Defendant Sharma entered into this Agreement while still an employee of MUSC.

t. On September 26, 2021, HCA recruiter contacts Dr. Ted Meyer at MUSC. **Exhibit #33**. Dr. Meyer is part of the team reflected in **Exhibit #3**.

u. On October 4, 2021, HCA offers employment to Jamie Willsgard, a MUSC registered nurse. **Exhibit #34**.

v. On October 12, 2021, HCA solicits Kym Kittle, Registered Nurse for the Operating Room, to work for HCA. Exhibit #35 (tab 65). Ms. Kittle is part of the team reflected in **Exhibit #3**.

39. During the six (6) month period prior to notifying MUSC of their resignations, Defendant physicians collectively took over 1,000 hours of leave. In addition, their collective

productivity dropped approximately twenty-five percent (25%) from the same time period during the prior year.

V. MUSC's HNO Fellowship Program

40. In 2003, in furtherance of its tri-partite mission of education, research, and clinical excellence, a fellowship program was established in the HNO Division, the Fellowship in Surgical Oncology and Microvascular Reconstruction of the Head and Neck at MUSC ("HNO Fellowship Program"). Each academic year, two fellows who have completed their residencies are employed by MUSC and, through the HNO Fellowship Program, receive the highest level of training in the management and surgical treatment of head and neck cancer to physicians.

41. The HNO Fellowship Program became accredited by the American Head and Neck Society ("AHNS"), the largest organization in North America for the advancement of research and education in head and neck oncology. In 2010, the first fellow graduated from the HNO Fellowship Program.

42. AHNS-accredited fellowship programs are surveyed by AHNS's Advanced Training Council ("ATC"), which evaluates each program by applying established criteria set forth in its published Qualifications and Duration of Fellowship in Head and Neck Surgical Oncology and Research ("ATC Guidelines"). Each fellowship program is re-evaluated at five (5) year intervals or upon significant changes to the program. There are less than fifty (50) AHNS-accredited fellowship programs in the United States.

43. The reputational benefits and distinction to MUSC because of the AHNS accreditation of its HNO Fellowship Program cannot be quantified. In my career in academic

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medicine, such distinction materially assists an academic health system, including MUSC, with recruiting high-quality faculty and attracting research funding opportunities and students interested in research.

44. Because there are a limited number of AHNS-accredited fellowship programs in the United States, completion of an accredited fellowship provides physician fellows with critical credentials to enter into a career in academic medicine. Although other non-accredited institutions may offer what they label as a "fellowship," lack of AHNS accreditation is a negative factor considered by academic institutions when hiring physicians who have participated in an unaccredited fellowship. This primarily is because there is a lack of oversight and accountability for the qualitative and quantitative multidisciplinary experiences required by an AHNS-accredited fellowship program.

45. MUSC's HNO Fellowship Program has maintained continuous accreditation since 2010. In 2019, AHNS re-accredited the MUSC's HNO Fellowship Program based on the following information:

a. Patients are referred from the Southeast Region of the United States with over ninety percent (90%) of referrals from South Carolina through the Head & Neck Nurse Navigator, Julie Akers.[4] All patients with advanced stage HNSCC, endocrine, skull base, cutaneous, and sarcoma are coordinated to see all multidisciplinary specialists at their first visit as appropriate. This would include Head and Neck Surgery, Medical Oncology, Radiation Oncology, Dental, Speech, Endocrine, Dermatology, Geneticist, and Neurosurgery as indicated.

[4] On November 17, 2021, Julie Molony (f/k/a Julie Akers) submitted her resignation to MUSC. On information and belief, Ms. Molony is leaving MUSC to work at Trident.

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b. Interdisciplinary surgical activities include that all specialists noted above coordinate surgical care prospectively and joint cases are performed often with Head and Neck Surgery, Head and Neck Reconstructive Surgery, Neurosurgery, Vascular Surgery, Thoracic Surgery and GI Surgery as needed.

c. During the previous academic year, MUSC evaluated 1,628 head and neck cancer patients, of which 485 patients were treated surgically.

d. During each fellow's one-year HNO Fellowship, he or she is expected to operate on over 700 patients and participate in over 80 major head and neck operations.

46. Currently, Trident Medical Center in North Charleston does not have a fellowship program for head and neck oncology, and it will not have a fellowship program when the defendant physicians begin work at Trident Medical Center. For purposes of evaluating defendant physicians' motivations for bringing the current fellows with them to Trident, it is important to note that in addition to providing educational experiences, the use of fellows has been an integral part of the success and innovation of MUSC's HNO Division. Fellows are essential in providing necessary physician-hours during the long and complicated procedures. Without the fellows, the physicians themselves would be required to be present at all times for these long operations.

47. One of the defendant physicians, David M. Neskey, served as the Fellowship Director for MUSC's HNO Fellowship Program.

48. After announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey stated that the defendant physicians "plann[ed] on having [the fellows] transition with us." **Exhibit #11**.

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49. Based on defendant Neskey's statement, the defendant physicians planned on taking the fellows at MUSC to Trident Medical Center, once the defendant physicians started working for HCA.

50. In addition, as reflected in the email correspondence identified as **Exhibit #12**, after announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey contacted the AHNS to attempt to transfer the existing fellows at MUSC to HCA despite the lack of any AHNS-accredited program at Trident. Specifically, Defendant Neskey, without notifying anyone else at MUSC, directly contacted the AHNS ATC to advise them of the planned departures of the defendant physicians and engaged in multiple subsequent correspondence with the AHNS Co-Chairs, Drs. Don Weed and Amy Hessel, without notifying anyone at MUSC of this correspondence. Instead, defendant Neskey prepared a written statement to the ATC responding to the specific questions posed by them.

51. In further attempts to transfer the existing fellows from MUSC to Trident, on or before September 8, 2021, Defendant Neskey requested that defendant Day's administrative assistant forward him a copy of the ATC Accreditation Package for the MUSC HNO Fellowship Program that was completed in October 2019—a forty-six (46) page document containing all of the detailed information needed for MUSC to obtain its ATC Accreditation of the HNO Fellowship Program. Subsequently, on or before September 13, 2021, Defendant Neskey requested that the AHNS Associate Executive Director forward him a blank AHNS Fellowship Program application, reflecting Defendant Neskey's clear intent to use the MUSC 2019 detailed packet to support an application for a new accredited fellowship program to be established at defendant HCA's facilities.

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52. Following defendant physician Neskey's email, the AHNS sent formal correspondence to MUSC, which is identified as **Exhibit #13**, regarding the continued accreditation of the HNO Fellowship Program at MUSC. This correspondence was copied to MUSC's current two (2) fellows and the incoming Academic Year 2022-2023 fellows who have committed to MUSC's HNO Fellowship Program.

53. On November 9, 2021, AHNS sent out a mass email to its approximately fifty (50) Fellowship Program Directors nationwide, advising of the "major disruption" to MUSC's HNO Fellowship Program due to the impending departure of the defendant physicians. In this correspondence, AHNS advised that given the efforts by MUSC to devote and recruit resources to the HNO Division, the current fellows' education experience will be sufficient to meet the AHNS accreditation requirements. However, AHNS further advised that for the incoming 2022-2023 MUSC fellows, they would be released from their commitments to come to MUSC next year. In addition, AHNS has deferred any decision as to whether MUSC can participate in the 2023-2024 fellowship "match" cycle, which is scheduled to begin within the next two (2) months.

VI. Irreparable Harm

54. As a As a result of the actions set forth in this affidavit, MUSC's confidential and proprietary information is in the hands of a for-profit healthcare facility, HCA, and of soon-to-be HCA employees.

55. MUSC is concerned for patients suffering from head and neck cancers. It is concerned that another healthcare facility (and former MUSC employees) may seek to use MUSC's confidential and proprietary information to try to emulate those complex procedures that have been historically performed by and at MUSC at a facility that, upon information and belief, is not capable of accommodating such procedures.

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56. In addition, as a result of the actions set forth in this affidavit, MUSC's HNO Fellowship Program is under attack and pursuit by soon-to-be HCA employees.

57. As long as MUSC's HNO Fellowship Program has existed, it has been an integral part of innovation, research and training. It has assisted tremendously in the extremely important task of training the next generation of healthcare providers, and it has played a significant part in extending and making more enjoyable the lives of those who have been touched by cancer.

58. MUSC needs to preserve its confidential and proprietary information and its HNO Fellowship Program, so it may continue with its mission to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

FURTHER AFFIANT SAYETH NOT.

Patrick J. Cawley, M.D., MHM, FACHE

SWORN TO AND SUBSCRIBED before
me this 9th day of November, 2021.

Notary Public for S.C.

Angelia M Baldwin
Print Name

My Commission Expires: August 13, 2023

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF. RAYMOND N. DUBOIS

I, Raymond N. DuBois, MD, PhD being duly sworn deposes and says:

I. Background about Dr. DuBois

1. I am of sound mind and body, over the age of eighteen (18), and competent to offer testimony.

2. I offer this affidavit based upon my personal knowledge, based upon information and records maintained by the Medical University of South Carolina ("MUSC"), and based upon information and records maintained in the Dean's office.

3. I currently hold the positions of Dean of the College of Medicine at MUSC and Director of the MUSC Hollings Cancer Center.

4. I became Dean of the College of Medicine at MUSC in March 2016, and I became the Director of the MUSC Hollings Cancer Center in 2020. I have worked in academic medicine for

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over thirty-five (35) years and have faculty and leadership positions at multiple institutions, including the University of Texas MD Anderson Cancer Center, the Mayo Clinic, Vanderbilt University Medical Center, and the American Association for Cancer Research.

5. As Dean, I serve as the Chief Academic Officer for the College of Medicine at MUSC, and I perform the roles and responsibilities set forth in the position description, which is attached hereto as **Exhibit #1**.

6. As the Director of the MUSC Hollings Cancer Center, I am generally responsible for the overall administration related to the basic, population, and clinical research activities within the Hollings Cancer Center and the cancer service line for the Hollings Cancer Center in conjunction with the College of Medicine and MUSC Health. A more thorough description of my job duties as Director of the MUSC Hollings Cancer Center is attached hereto as **Exhibit #2**.

7. I am a Member of the University Medical Associates ("UMA"), the Faculty Practice Plan of MUSC, and I serve on UMA's Board of Directors and its Executive Committee. The UMA is a South Carolina not-for-profit corporation pursuant to Title 33 Chapter 11 of the South Carolina Code of Laws.

II. MUSC's Head & Neck Oncology Division

8. MUSC has provided specialty care in Otolaryngology (colloquially known as "ear, nose, and throat") to South Carolina citizens for over a century. Over the past twenty (20) years, the Department of Otolaryngology has maintained national recognition, including ranking in the top ten (10) departments in its specialty in National Institute of Health ("NIH") research funding, offering a top ten (10) residency program, and achieving U.S. News and World Report rankings in the top fifteen (15) ear, nose, and throat services in the country. The Department's faculty

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conduct education, research, and clinical services in nine (9) different subspecialties, including Head and Neck Oncology.

9. MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") is one of the largest programs in the country devoted to the care of the head and neck cancer patient. It was developed and has continuously evolved since the current Department Chair, Paul Lambert, M.D., and defendant physician Day arrived at MUSC in 1999. In 2015, MUSC opened the Wendy and Keith Wellin Head and Neck Oncology Center after receiving a generous donation from the Wellin family. The Center is a partner with MUSC Hollings Cancer Center ("the Center"), the only NCI-designated cancer center in South Carolina, and the Department contributed $500,000 to the capital needed to establish a state-of-the-art center.

10. At the Center, a comprehensive multi-disciplinary team comprised of surgeons, radiation oncologists, medical oncologists, maxillofacial prosthodontists, speech and swallowing specialists, nutritionists, and social workers have provided point-of-service, coordinated care from an initial patient encounter through treatment and survivorship. Overall, 750 to 800 new patients with head and neck cancer are evaluated at MUSC annually.

11. Prior to their effective resignation dates, each of the defendant physicians in this action were long-term faculty members and medical care providers, working in MUSC's HNO Division. In addition, each of the defendant physicians in this action were, at all relevant times, Members of the UMA.

12. Defendant Davis joined the Department of Otolaryngology in 1995. After completing his own fellowship at MUSC in 2005, Defendant Hornig joined the Division. Defendant Lentsch joined the Division in 2006. Defendant Neskey joined the Division in 2014. Defendant Sharma joined the Department of Radiation Oncology in 2001, and has held a faculty appointment in the

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Department of Otolaryngology since 2003. Over time, MUSC developed and nurtured a comprehensive team of clinicians to furnish the highest levels of care to the hundreds of patients MUSC treats annually. The complete list of the team members providing this treatment to patients on behalf of MUSC is attached hereto as **Exhibit #3.**

13. With certain exceptions,[1] the individuals reflected in **Exhibit #3** are current employees of MUSC as of the date of this affidavit. Effective December 1, 2021, the defendant physicians will no longer be a part of this team, as they have resigned from MUSC, and they will, upon information and belief, work for Trident Medical Center in North Charleston, which is operated by defendant HCA Healthcare, Inc. ("HCA").

14. Unlike MUSC, which is a public academic health system with a tri-partite mission of education, research, and providing clinical excellence to all citizens of South Carolina and beyond, Trident Medical Center is a private for-profit healthcare facility and its parent company, HCA, is a publicly-traded corporation obligated to earn profits for its shareholders.

15. Historically, Trident Medical Center has not performed the complex type of head and neck procedures at its North Charleston location that MUSC's HNO Division performs. The types of medical procedures performed by MUSC's HNO Division are long, multi-phase and complicated procedures, often lasting up to ten (10) to fifteen (15) hours.

16. Upon information and belief, Trident Medical Center does not have the facilities, equipment, manpower, and know-how to provide patients with the level of care that MUSC's HNO Division provides. Notably, simultaneously with the defendant physicians' resignations from MUSC, Trident Medical Center filed a Certificate of Need Application, attached hereto as **Exhibit**

[1] Sara Jasper, Caitlin Mengler, Kiely St. Germain, and Hannah Feltner all resigned and left MUSC during October 2021 and, upon information and belief, are or will be working at Trident Medical Center in North Charleston for HCA.

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#4, to expand its facility in an attempt to achieve the capability to perform the complex type of head and neck procedures at its North Charleston location. In addition, even if Trident's facilities are currently sufficient to support a ten (10) to fifteen (15) hour surgery, but for defendant HCA's wholesale poaching of MUSC's HNO Division's valuable resources and know-how, Trident would be incapable of providing any quality head and neck oncology surgical services for many years.

17. MUSC built its HNO Division over two decades and developed the processes to perform these operations over the course of the last two decades. MUSC did so not with an eye not towards maximizing revenue, but with the goal of fulfilling its institutional and statutory mission, which is to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

III. MUSC's Confidential & Proprietary Information

18. During the last two decades, when MUSC has been building its HNO Division, it has identified and purchased the equipment necessary to perform these procedures, identified the team members necessary to perform these procedures, and developed physician preference cards and instrument lists to perform these procedures.

19. MUSC's physician preference cards are catalogues of specific tools, supplies, and room setup that a surgeon prefers for a particular type of surgery. MUSC's physician preference cards are confidential and proprietary information belonging to MUSC, not to any individual employee.

20. MUSC's instrument lists identify the instruments specific surgeons need to perform certain procedures. MUSC's instrument lists are confidential and proprietary information belonging to MUSC, not to any individual employee.

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21. MUSC's physician preference cards and instrument lists enable the team members to perform the complicated head and neck procedures MUSC's HNO Division has historically performed.

22. MUSC's physician preference cards and instrument lists are not disclosed to the public and are not available in the public domain.

23. MUSC maintains policies and procedures to protect its confidential and proprietary information from disclosure to unauthorized recipients. In addition, MUSC limits access to its confidential and proprietary information. MUSC only allows those persons to access such information who have a legitimate need to do so. To the extent one attempts to access such information remotely, MUSC uses a two-factor authentication system.

24. An example of the confidentiality obligations imposed on MUSC's employees can be found in the Code of Conduct, which is part of the MUSC Faculty Handbook. The Code of Conduct expressly states that "[n]o employee shall disclose confidential information or use such information for his or her personal benefit." **Exhibit #5**.

25. While still employed by MUSC but after notifying MUSC of their intent to resign, upon information and belief, defendant physicians Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC, Jamie Wilsgard, to send physician preference cards from MUSC to HCA. The email correspondence where Ms. Wilsgard transmitted these physician cards to HCA is identified as **Exhibit #6**[2].

[2] By its very nature, the part of Exhibit #6 that contains the physician preference cards is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

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26. Defendant physicians Day, Hornig, Lentsch, and Neskey did not have the authority to transmit MUSC's physician preference cards to HCA, and by doing so, defendant physicians Day, Hornig, Lentsch, and Neskey violated MUSC's policies and procedures.

27. While still employed by MUSC but after notifying MUSC of his intent to resign, defendant physician Hornig obtained MUSC's instrument list and sent this information to HCA. Defendant Hornig's transmission of this information to HCA is reflected in **Exhibit #7**.[3]

28. Upon information and belief, Trident Medical Center never had the physician preference cards and instrument lists necessary to enable defendant physicians (or other physicians) to quickly develop a facility, processes, and procedures to efficiently perform the type of head and neck procedures that have been historically performed by and at MUSC.

29. Without the physician preference cards and instrument lists, the defendant physicians would not be able to quickly establish the facilities, processes, and procedures to perform the complicated head and neck procedures at Trident Medical Center in North Charleston that the team members have historically performed at MUSC.

30. MUSC's patient lists are also confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

31. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. **Exhibit #8**.

[3] The email from defendant physician Hornig has been filed with the court, but the instrument list attached to the email is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

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32. The amount of revenue generated by MUSC and the physician's relative value unit or "RVU" are confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

33. Approximately six (6) months prior to announcing his resignation from MUSC, defendant physician Day obtained his RVU and salary for the past ten (10) years. In addition, defendant physician Day obtained this information for defendant physicians Sharma, Lentsch, and Hornig as well. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #9**.

34. MUSC's case logs are also confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

35. After resigning from MUSC, defendant physician Day obtained his case logs for fiscal years 2019, 2020, and 2021. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #10**.

36. In addition, defendants Davis and Neskey obtained confidential information concerning MUSC's residents and fellows as evidenced by **Exhibit #14** and **Exhibit #15**.

37. In **Exhibit #14**, defendant Davis obtained information about MUSC's residents' salaries.

38. In **Exhibit #15**, defendant Neskey obtained the signed contracts for the incoming fellows in MUSC's Fellowship Program.

39. The information reflected in **Exhibits #14 and #15** are confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

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IV. MUSC's HNO Fellowship Program

40. In 2003, in furtherance of its tri-partite mission of education, research, and clinical excellence, a fellowship program was established in the HNO Division, the Fellowship in Surgical Oncology and Microvascular Reconstruction of the Head and Neck at MUSC ("HNO Fellowship Program"). Each academic year, two fellows who have completed their residencies are employed by MUSC and, through the HNO Fellowship Program, receive the highest level of training in the management and surgical treatment of head and neck cancer to physicians.

41. The HNO Fellowship Program became accredited by the American Head and Neck Society ("AHNS"), the largest organization in North America for the advancement of research and education in head and neck oncology. In 2010, the first fellow graduated from the HNO Fellowship Program.

42. AHNS-accredited fellowship programs are surveyed by AHNS's Advanced Training Council ("ATC"), which evaluates each program by applying established criteria set forth in its published Qualifications and Duration of Fellowship in Head and Neck Surgical Oncology and Research ("ATC Guidelines"). Each fellowship program is re-evaluated at five (5) year intervals or upon significant changes to the program. There are less than fifty (50) AHNS-accredited fellowship programs in the United States.

43. The reputational benefits and distinction to MUSC because of the AHNS accreditation of its HNO Fellowship Program cannot be quantified. In my career in academic medicine, such distinction materially assists an academic health system, including MUSC, with recruiting high-quality faculty and attracting research funding opportunities and students interested in research.

44. Because there are a limited number of AHNS-accredited fellowship programs in the United States, completion of an accredited fellowship provides physician fellows with critical credentials

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to enter into a career in academic medicine. Although other non-accredited institutions may offer what they label as a "fellowship," in my experience, lack of AHNS accreditation is a negative factor considered by academic institutions when hiring physicians who have participated in an unaccredited fellowship. This primarily is because, in my opinion, there is a lack of oversight and accountability for the qualitative and quantitative multidisciplinary experiences required by an AHNS-accredited fellowship program.

45. MUSC's HNO Fellowship Program has maintained continuous accreditation since 2010. In 2019, AHNS re-accredited the MUSC's HNO Fellowship Program based on the following information:

(a) Patients are referred from the Southeast Region of the United States with over ninety percent (90%) of referrals from South Carolina through the Head & Neck Nurse Navigator, Julie Akers.[4] All patients with advanced stage HNSCC, endocrine, skull base, cutaneous, and sarcoma are coordinated to see all multidisciplinary specialists at their first visit as appropriate. This would include Head and Neck Surgery, Medical Oncology, Radiation Oncology, Dental, Speech, Endocrine, Dermatology, Geneticist, and Neurosurgery as indicated.

(b) Interdisciplinary surgical activities include that all specialists noted above coordinate surgical care prospectively and joint cases are performed often with Head and Neck Surgery, Head and Neck Reconstructive Surgery, Neurosurgery, Vascular Surgery, Thoracic Surgery and GI Surgery as needed.

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(d) During each fellow's one-year HNO Fellowship, he or she is expected to operate on over 700 patients and participate in over 80 major head and neck operations.

46. Currently, Trident Medical Center in North Charleston does not have a fellowship program for head and neck oncology, and it will not have a fellowship program when the defendant physicians begin work at Trident Medical Center. For purposes of evaluating defendant physicians' motivations for bringing the current fellows with them to Trident, it is important to note that in addition to providing educational experiences, the use of fellows has been an integral part of the success and innovation of MUSC's HNO Division. Fellows are essential in providing necessary physician-hours during the long and complicated procedures. Without the fellows, the physicians themselves would be required to be present at all times for these long operations.

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48. After announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey stated that the defendant physicians "plann[ed] on having [the fellows] transition with us." **Exhibit #11**.

49. Based on defendant Neskey's statement, the defendant physicians planned on taking the fellows at MUSC to Trident Medical Center, once the defendant physicians started working for HCA.

50. In addition, as reflected in the email correspondence identified as **Exhibit #12**, after announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey contacted the AHNS to attempt to transfer the existing fellows at MUSC to HCA despite the lack of any

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AHNS-accredited program at Trident. Specifically, Defendant Neskey, without notifying anyone else at MUSC, directly contacted the AHNS ATC to advise them of the planned departures of the defendant physicians and engaged in multiple subsequent correspondence with the AHNS Co-Chairs, Drs. Don Weed and Amy Hessel, without notifying anyone at MUSC of this correspondence. Instead, defendant Neskey prepared a written statement to the ATC responding to the specific questions posed by them.

51. In further attempts to transfer the existing fellows from MUSC to Trident, on or before September 8, 2021, Defendant Neskey requested that defendant Day's administrative assistant forward him a copy of the ATC Accreditation Package for the MUSC HNO Fellowship Program that was completed in October 2019—a forty-six (46) page document containing all of the detailed information needed for MUSC to obtain its ATC Accreditation of the HNO Fellowship Program. Subsequently, on or before September 13, 2021, Defendant Neskey requested that the AHNS Associate Executive Director forward him a blank AHNS Fellowship Program application, reflecting Defendant Neskey's clear intent to use the MUSC 2019 detailed packet to support an application for a new accredited fellowship program to be established at defendant HCA's facilities.

52. Following defendant physician Neskey's email, the AHNS sent formal correspondence to MUSC, which is identified as **Exhibit #13**, regarding the continued accreditation of the HNO Fellowship Program at MUSC. This correspondence was copied to MUSC's current two (2) fellows and the incoming Academic Year 2022-2023 fellows who have committed to MUSC's HNO Fellowship Program.

53. On November 9, 2021, AHNS sent out a mass email to its approximately fifty (50) Fellowship Program Directors nationwide, advising of the "major disruption" to MUSC's HNO

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Fellowship Program due to the impending departure of the defendant physicians. In this correspondence, AHNS advised that given the efforts by MUSC to devote and recruit resources to the HNO Division, the current fellows' education experience will be sufficient to meet the AHNS accreditation requirements. However, AHNS further advised that for the incoming 2022-2023 MUSC fellows, they would be released from their commitments to come to MUSC next year. In addition, AHNS has deferred any decision as to whether MUSC can participate in the 2023-2024 fellowship "match" cycle, which is scheduled to begin within the next two (2) months.

54. Over my entire career, I have never seen or heard of a group of physicians engage in a wholesale abandonment of their students, colleagues, and patients similar to what the defendant physicians have orchestrated over the past several months. In the medical centers I have been associated with, like the Vanderbilt Medical Center in Nashville, Tennessee, from time to time physicians did leave to take an opportunity to work in the HCA Health System in Nashville, but these departures were carried out in an orderly and well-timed fashion so that no harm came to any of the trainees or to the patients. In the current situation outlined above, their continued actions will cause reputational harm to MUSC and will endanger MUSC's ability to recruit new fellows in future years.

VI. Potential Irreparable Harm

55. As a result of the actions set forth in this affidavit, MUSC's confidential and proprietary information is in the hands of a for-profit healthcare facility, HCA, and of soon-to-be HCA employees.

56. MUSC is concerned for patients suffering from head and neck cancers. It is concerned that another healthcare facility (and former MUSC employees) may seek to use MUSC's confidential and proprietary information to try to emulate those complex procedures that have been historically

performed by and at MUSC at a facility that, upon information and belief, is not capable of accommodating such procedures.

57. In addition, as a result of the actions set forth in this affidavit, MUSC's HNO Fellowship Program is under attack and pursuit by soon-to-be HCA employees.

58. As long as MUSC's HNO Fellowship Program has existed, it has been an integral part of innovation, research and training. It has assisted tremendously in the extremely important task of training the next generation of healthcare providers, and it has played a significant part in extending and making more enjoyable the lives of those who have been touched by cancer.

59. MUSC needs to preserve its confidential and proprietary information and its HNO Fellowship Program, so it may continue with its mission to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

FURTHER AFFIANT SAYETH NOT.

R. N. DuBois

Raymond N. DuBois, MD, PhD

SWORN TO AND SUBSCRIBED before me this 14th day of November, 2021.

Michelle M. Shanahan

Notary Public for S.C.

Michelle M. Shanahan

Print Name

My Commission Expires: 6/10/2026

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF. TIMOTHY BRENDLE

I, Timothy Brendle, first being duly sworn deposes and says:

1. I am the Chief Perioperative Operations Officer at MUSC Health, Charleston Division.

2. I earned a Bachelor of Science in Nursing, M.S. in Leadership and a Doctor of Nursing Practice or DNP in Nursing Administration from Regis University. I first obtained my license as a Registered Nurse in South Carolina in 1995. I hold the following certificates and licenses: Certified Nurse Operating Room or CNOR from the Competency & Credentialing Institute and Nurse Executive Certification or NE-BC from the American Nurses Credentialing Center.

3. I have worked at MUSC for approximately twenty-one (21) years. I oversee the Operating Room ("OR") operations for over 50 ORs and hybrid OR suites in all of MUSC Health's

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Charleston facilities. The procedures performed in the ORs include a broad range of highly specialized procedures with specific, tailored OR needs for each specialty and subspecialty procedure, including the Head & Neck Oncology procedures performed by the individual defendants.

4. While working for MUSC in the year 2000, I served as the ear, nose, and throat ("ENT") OR Coordinator, which oversaw all ENT procedures performed in the ORs, including Head and Neck Oncology procedures. At that time, I frequently oversaw day-to-day operations within the ENT service line, which included procedures performed by defendant Day. At that time, defendant Day and others on the Head and Neck team began developing the processes, procedures, and staffing requirements needed for the complex, multi-phase cancer removal and free-flap procedures performed by the defendants that often last up to ten (10) to fifteen (15) hours. These highly complex procedures involve multiple teams and specialized equipment. Over the past several years, MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") surgeons performed approximately three (3) to four (4) of these long, complex cases per week. This is an increase from what the Head and Neck team could perform when I began working for MUSC in the year 2000. At that time, the Head and Neck surgeons performed approximately one (1) to two (2) cases per week.

5. As new physicians were added to the multidisciplinary team developed to treat Head and Neck cancer patients, surgical "physician preference" cards were developed that specify each surgeon's preferences with respect to types and brands of instruments, supplies, and pharmaceuticals as well as processes to follow for each specialized type of procedure. The cards and equipment lists for the procedures are highly detailed and technical and have been perfected and assembled over decades of development at MUSC. Defendants Day, Hornig, Lentsch, and

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Neskey collectively have developed over 100 preference cards over the years for a broad range of specialized procedures.

6. Access to the procedure cards and instrument lists are restricted access for only certain MUSC employees and they are not accessible by the public.

7. I estimate it would take Trident Medical Center eight (8) to ten (10) years to independently grow the high-quality, multi-disciplinary Head and Neck surgical practice that MUSC has developed to date, and that is assuming that Trident devotes the same level of resources that MUSC has furnished to defendant physicians and their practice over the years.

8. I have reviewed the equipment list in Trident Medical Center's Certificate of Need ("CON") Application, filed on August 30, 2021 and identified in **Exhibit #4**. The items listed in the CON Application are not adequate to perform the procedures performed by the Head and Neck team at MUSC, or to train and educate residents, fellows, surgical nurses and surgical techs.

FURTHER AFFIANT SAYETH NOT.

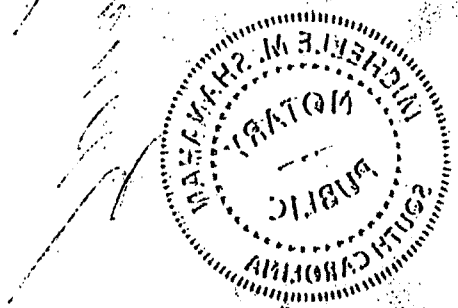
Timothy Brendle

SWORN TO AND SUBSCRIBED before me this 19th day of November, 2021.

Michelle M Sharahan
Notary Public for S.C.

Michelle M Sharahan
Print Name

My Commission Expires: 6/10/2026


NOTARY
PUBLIC
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,	)	
Plaintiffs,	)	Civil Action No. _____
v.	)	
HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC; TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA,	)	AFFIDAVIT OF DAVID S. LEVITT
Defendants.	)	

I, David S. Levitt, after being duly sworn deposes and says:

1. I am the Managing Partner of Levitt Healthcare Affiliates. I have a Master's in Health Administration ("MHA") from George Washington University and over 30 years of experience in health care planning and health care finance.

2. Over the course of my career, I have assisted more than 675 health care clients with strategic planning, business development, product line planning, and marketing. I have assisted in the preparation of more than 1,250 Certificate of Need ("CON") applications, providing, inter alia, analyses of relevant markets for services, utilization projections, and financial forecasts.

3. I have served and have been qualified as an expert witness in health planning, healthcare finance, and financial feasibility in five States, including South Carolina, and I have

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provided testimony on all manner of health care services, including new hospital development. A copy of my CV is included as **Attachment 1**.

4. I have been engaged by Medical University of South Carolina ("MUSC"), Medical University Hospital Authority ("MUHA"), and related organizations for the past 20+ years to assist with strategic planning, business development, product line planning, market analysis, product line profiling, merger, acquisition and joint venture analysis and structure, developing competitor analysis, identifying strategies for market positioning, projecting utilization changes with strategy implementation, projecting financial effect of strategy implementation, financial modeling of market share, patient composition, revenue, payor mix, contractual adjustments, and operating expenses variations, as well as product line development and revenue stream analysis.

5. Over the course of my 20+ years of engagements with MUHA, I have been involved in approximately 75 CON applications for MUHA to develop additional resources, services and facilities in South Carolina.

6. I have testified over 50 times in CON appeal hearings and trials, of which 14 times were in South Carolina.

7. On behalf of my client, Medical University Hospital Authority ("MUHA"), I performed an extensive review of publicly available financial information on HCA as well as Certificate of Need materials, records and correspondences related to the South Carolina Certificate of Need process.

8. In reviewing Certificate of Need records since 2014, Trident and related companies have, as declared affected parties, opposed at least 10 CON applications submitted by MUHA, whose total project expenditures total over **$463,500,000**. They include:

(a) 4 OR Pediatric ASC - $26.4 million

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(b) Pediatric Imaging Center - $39.8 Million

(c) Additional Linear Accelerator North Charleston - $8.1 million

(d) Ambulatory Surgery Center - $36.0 million

(e) 6th linear Accelerator - $9.8 million

(f) Freestanding Emergency Department (FSED) - $13.6 million

(g) NICU Expansion - $2 million

(h) Community Hospital - $325 million

(i) NICU Expansion - $2.8 million

9. MUHA is both a teaching hospital and referral center and is South Carolina's only academic medical center. As an academic medical center or teaching hospital, MUHA is at the forefront of the latest advances in medicine, with world-class physicians, groundbreaking research and technology that is often among the first of its kind in the world. Patients also benefit from a multidisciplinary team approach to care that involves the close collaboration of specialists from many different areas. MUHA and its affiliates offer a wide range of services to a large population base residing primarily in South Carolina and extending across the state and beyond. Among the services provided on the hospital's campus is a full range of emergency, maternity, pediatric, medical/surgical and diagnostic services. MUHA serves as an academic training facility for numerous medical residency programs. With **54** different medical specialty residency training programs, the hospital serves as a valuable resource for educating and preparing future physicians.

10. MUHA is a nine-hospital integrated healthcare system with multiple service locations throughout the state. The main hospital, MUSC Health University Medical Center in Charleston is one of five Level I adult trauma centers in the state, the only Level 4 NICU provider, and the only Level I pediatric trauma provider.

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11. Trident is a two-hospital tertiary community provider that offers Level II trauma services and Intermediate Care level neonatal services. Trident does not offer any subspecialty medical training options and offers only limited **(3)** general medical residency training options (Emergency Medicine, General Surgery and Internal Medicine).

12. Trident routinely transfers many critically ill patients to MUSC because Trident lacks the ability to provide the necessary specialized care and resources to these patients.

13. MUSC Health University Medical Center's current complement of Intensive Care Beds (ICU) includes 59 medical/surgical, 21 critical care, 47 pediatric, 16 neurosurgical/neurological for a total of **143** beds.

14. Trident operates 28 medical surgical ICU beds at Trident Medical Center and 8 medical surgical ICU beds at Summerville Medical Center for a total of **36** beds.

15. Trident filed a CON application on August 30, 2021 to expand its existing operating room and perioperative space at Trident Medical Center with a total project cost of $20,168,000. The Surgery Department expansion will be composed of 9,785 new Building Gross Square Feet (BGSF) and 2,856 renovated BGSF for a total addition of 12,641 BGSF. The project will add 3 additional, operating rooms ("OR"), 8 pre-/post-operative rooms, and an additional post-anesthesia care unit ("PACU") recovery bay. A new drop-off entry canopy and lobby with a connecting corridor to the existing registration area will also be included, along with storage and other necessary administrative areas. The proposed project also includes shelled space, which will initially be used as storage but could be converted to serve as an additional OR in the future. The renovations and expansion are necessary because the current physical plant cannot accommodate the complex and specialized surgical cases that are expected to be performed by newly recruited physicians.

FURTHER AFFIANT SAYETH NOT.

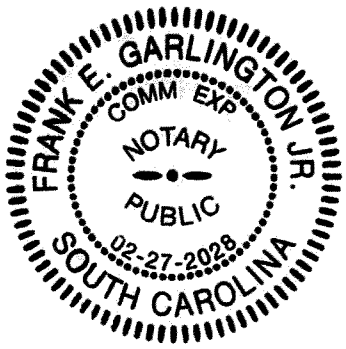
David S. Levitt
Levitt Healthcare Affiliates

SWORN TO AND SUBSCRIBED before me this 19th day of November, 2021.

Notary Public for S.C.

Frank Garlington jr
Print Name

My Commission Expires: 2-27-2028



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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, vs. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ANAND K. SHARMA, Defendants.	Case No. 2021-CP-10-05289 **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**

The Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") submit this Memorandum of Law in support of their Motion for Temporary Injunction. Plaintiffs move for injunctive relief following the recent resignation of Terry Day, Betsy Davis, Joshua Hornig, Eric Lentsch, David Neskey, and Anand Sharma ("Individual Defendants") from MUSC. The Individual Defendants were long-term faculty members and medical care providers at MUSC. Four of the Individual Defendants are surgeons (Day, Hornig, Lentsch, and Neskey), one is a dentist (Davis), and one is a radiologist (Sharma). Together, the Individual Defendants were part of a team of healthcare professionals who treated patients suffering from head and neck cancer at MUSC.

While still employed by MUSC and while still members of UMA, the Individual Defendants schemed, plotted, and planned with each other and their new employer, Trident

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Medical Center (which is owned by HCA Healthcare, Inc. ("HCA")), to effect a wholesale departure of MUSC's head and neck cancer team (including its confidential and proprietary information) to Trident Medical Center in North Charleston. Trident Medical Center has never possessed the capabilities to perform advanced head and neck cancer procedures at its North Charleston location, like those historically performed at MUSC. And, to this day, Trident Medical Center, upon information and belief, still does not possess these capabilities.

While still employees of MUSC and while still members of UMA, the Individual Defendants took valuable confidential and proprietary information belonging to Plaintiffs. The Individual Defendants took Plaintiffs' confidential and proprietary information and disseminated it to Trident Medical Center, LLC and HCA Healthcare, Inc. (collectively "Hospital Defendants"). They did so for the sole purpose of providing themselves and the Hospital Defendants with the capabilities of performing head and neck procedures at Trident's North Charleston location. At the same time, Trident Medical Center completed a Certificate of Need ("CON") Application to attempt to expand its operating room and perioperative space at Trident to accommodate the Individual Defendants' head and neck practice.

Further, the Individual Defendants, while working for MUSC and while members of UMA, took deliberate actions to interfere with and sabotage MUSC's fully-accredited head and neck fellowship program. The Individual Defendants did so with the hopes of taking the fellows (who are an integral part of the surgical work the Individual Defendants perform) with them to Trident Medical Center. Additionally, the Individual Defendants, while employed by MUSC and while members of UMA, actively solicited current employees on the head and neck cancer team to resign from their employment with MUSC and work with them at Trident Medical Center. The Hospital

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Defendants, armed with Plaintiffs' confidential and proprietary information, used this information to solicit current MUSC employees.

Plaintiffs bring this action to put an immediate stop to obvious unlawful conduct. Subsequent to the filing of the Complaint and this motion for temporary injunction, Plaintiffs reached a settlement with the Individual Defendants. At this time, the only claims remaining are against the Hospital Defendants, and Plaintiffs seek injunctive relief only against the Hospital Defendants.

Facts

The Individual Defendants were part of a specialized head and neck cancer team at MUSC.

The Individual Defendants were long-term faculty members and medical care providers at MUSC.[1] *Affidavit of Dr. Cawley ¶¶ 7, 9; Affidavit of Dean DuBois ¶¶ 9, 11; Complaint ¶ 10.* While at MUSC, the Individual Defendants worked in MUSC's Department of Otolaryngology (colloquially known as ear, nose, and throat) in the Division of Head and Neck Oncology ("HNO Division"). *Affidavit of Dr. Cawley ¶¶ 7, 9; Affidavit of Dean DuBois ¶¶ 9, 11.* At MUSC, the Individual Defendants were part of a comprehensive team of clinicians who provided world-class treatment to patients suffering from head and neck cancer. *Affidavit of Dr. Cawley ¶¶ 6-8, 11; Affidavit of Dean DuBois ¶¶ 8-10, 12; Exhibit #3.*

The procedures performed by the Individual Defendants and the rest of the team of clinicians at MUSC were multi-phase and complicated, often lasting up to ten (10) to fifteen (15)

[1] The Individual Defendants provided clinical care through UMA. UMA is MUSC's faculty practice plan. *Complaint ¶ 10.* MUSC employs faculty medical care providers, which included the Individual Defendants, to provide clinical care through UMA. *Complaint ¶ 10.* The Individual Defendants were members of UMA and were paid, in part, through UMA. *Affidavit of Dr. Cawley ¶ 9; Affidavit of Dean DuBois ¶ 11; Complaint ¶ 11.*

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hours. *Affidavit of Dr. Cawley ¶ 13; Affidavit of Dean DuBois ¶ 15; Affidavit of Mr. Brendle ¶ 4.* MUSC did not develop its HNO Division overnight. MUSC developed it over the course of the last two decades and dedicated countless hours and resources into making the HNO Division what it is today—one of the largest programs in the country devoted to the care of the head and neck cancer patient. *Affidavit of Dr. Cawley ¶¶ 6-7; Affidavit of Dean DuBois ¶ 8-9.*

The Individual Defendants and Hospital Defendants plan to transport the HNO Division from MUSC to Trident Medical Center.

While still employed by MUSC and while still members of UMA, the Individual Defendants began planning the mass departure of the HNO Division from MUSC to Trident Medical Center. *Affidavit of Dr. Cawley ¶ 38.* This plan involved the Individual Defendants taking Plaintiffs' confidential and proprietary information and disseminating it to the Hospital Defendants. *Affidavit of Dr. Cawley ¶¶ 16-37; Affidavit of Dean DuBois ¶ 18-39.* In July through August 2021, the Individual Defendants announced their plans to resign from MUSC.[2] *Complaint ¶¶82-87.* By the time of this announcement, the Individual Defendants and Hospital Defendants' plan was well underway.

In February 2021, HCA emailed Individual Defendant Neskey about traveling Nashville to meet with HCA leaders. *Exhibit #16*; *Complaint ¶ 77.* This email from HCA alludes to prior conversations between Individual Defendants Day and Neskey "about this opportunity." *Exhibit #16.* Based on the email correspondence, it appears as though Individual Defendants Neskey and Day traveled to Nashville to meet with HCA leaders sometime after the aforementioned email. *Id.* In March 2021, Individual Defendant Day emailed Individual Defendants Davis and Sharma to connect them with legal counsel to discuss "non-compete and legal concerns with future plans."

[2] Their last day of employment with MUSC was November 30, 2021. *Complaint ¶ 34.*

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Exhibit #17; Complaint ¶ 78. In June 2021, Individual Defendant Day confirmed upcoming meetings with the Hospital Defendants. *Exhibit # 18; Complaint ¶ 79.* The purpose of the meetings was to finalize contracts and to discuss the "departure from current employer and timeline." *Id.* On August 30, 2021, Trident Medical Center filed a CON Application to attempt to expand its operating room and perioperative space at Trident to accommodate the Individual Defendants' head and neck practice. *Exhibit #4; Affidavit of David Levitt ¶ 15.*

Meanwhile, the Individual Defendants (while still employed by MUSC and while still members of UMA) began taking confidential and proprietary information belonging to Plaintiffs. *Dr. Cawley's Affidavit ¶¶ 17-20, 30-37; Dean DuBois' Affidavit ¶¶ 19-22, 32-39; Mr. Brendle's Affidavit ¶¶ 5-6.* The Individual Defendants took Plaintiffs' confidential and proprietary information with the intent of using such information in their new positions as employees of Hospital Defendants. *Dr. Cawley's Affidavit ¶ 38.* In some cases, the Individual Defendants were careless enough to email Plaintiffs' confidential and proprietary information directly to the Hospital Defendants from their MUSC email accounts. *Dr. Cawley's Affidavit ¶¶ 23-25; Dean DuBois' Affidavit ¶¶ 25-27; Exhibits #6-7.*

While employed by MUSC and while members of UMA, the Individual Defendants took the following confidential and proprietary information from Plaintiffs:

1. Physician preference cards,
2. Instrument lists,
3. Financial information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC,[3]

[3] In the medical industry, this information is commonly referred to as the physician's relative value unit or RVUs. *Dr. Cawley's Affidavit ¶ 30.*

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4. Financial information showing the salaries four of the Individual Defendants received while employed by MUSC,

5. Case logs for Defendant Day, and salaries for MUSC's residents and signed contracts for incoming fellows in the HNO Fellowship Program.

Dr. Cawley's Affidavit ¶¶ 17-20, 30-37; Dean DuBois' Affidavit ¶¶ 19-22, 32-39; Mr. Brendle's Affidavit ¶¶ 5-6.

Plaintiffs' physician preference cards are catalogues of specific tools, supplies, and room setup that a surgeon prefers for a particular type of surgery. *Dr. Cawley's Affidavit ¶ 17; Dean DuBois' Affidavit ¶ 19.* Plaintiffs' instrument lists identify the instruments specific surgeons need to perform certain procedures. *Dr. Cawley's Affidavit ¶ 18; Dean DuBois' Affidavit ¶ 20.* These physician preference cards and instrument lists are extremely important and valuable information, as they enable the Individual Defendants, along with the rest of the team of clinicians, to perform the complicated, multi-phase head and neck cancer procedures that have historically been performed at MUSC. *Dr. Cawley's Affidavit ¶ 19; Dean DuBois' Affidavit ¶ 21; Affidavit of Mr. Brendle ¶ 5.*

Upon information and belief, Defendants Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC to send Plaintiffs' physician preference cards to an employee of Trident Medical Center. *Dr. Cawley's Affidavit ¶ 23; Dean DuBois' Affidavit ¶ 25.* The registered nurse did as she was told. *Id.*; *Exhibit #6.* Defendant Hornig obtained Plaintiffs' instrument lists and sent it via email directly to an employee of Trident Medical Center. *Dr. Cawley's Affidavit ¶ 25; Dean DuBois' Affidavit ¶ 27; Exhibit #7.*

The Individual Defendants did not stop there. While working for MUSC and while members of UMA, the Individual Defendants engaged in the following acts and obtained the following information:

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- Defendant Davis attempted to obtain Plaintiffs' patient list. *Dr. Cawley's Affidavit ¶ 29; Dean DuBois' Affidavit ¶ 31; Exhibit #8.*

- Defendant Day obtained information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC. *Dr. Cawley's Affidavit ¶ 31; Dean DuBois' Affidavit ¶ 33; Exhibit #9.*

- Defendant Day obtained financial information showing the salaries for four Individual Defendants while employed by MUSC. *Dr. Cawley's Affidavit ¶ 31; Dean DuBois' Affidavit ¶ 33; Exhibit #9.*

- Defendant Day obtained his case logs for the fiscal years 2019, 2020, and 2021. *Dr. Cawley's Affidavit ¶ 33; Dean DuBois' Affidavit ¶ 35; Exhibit #10.*

- Defendants Davis and Nesky obtained salary information for MUSC's residents and signed contracts for incoming fellows in the HNO Fellowship Program. *Dr. Cawley's Affidavit ¶¶ 35-36; Dean DuBois' Affidavit ¶¶ 37-38; Exhibit #14-#15.*

Upon information and belief, the Individual Defendants provided the foregoing information to the Hospital Defendants. *Dr. Cawley's Affidavit ¶¶ 54-55; Dean DuBois' Affidavit ¶¶ 55-56; Complaint ¶¶ 67, 70, 74.* The Individual Defendants have provided Plaintiffs' confidential and proprietary information to the Hospital Defendants in an attempt to develop a head and neck cancer treatment department at Trident Medical Cener. *Dr. Cawley's Affidavit ¶¶ 54-55; Dean DuBois' Affidavit ¶¶ 55-56; Complaint ¶ 74.* Without Plaintiffs' confidential and proprietary information, of which the Defendants are in wrongful and unlawful possession, the Defendants would be unable to provide quality head and neck oncology surgical services for many years. *Dr. Cawley's Affidavit ¶ 14; Dean DuBois' Affidavit ¶ 16.*

The Individual Defendants resigned from MUSC and as members of UMA on November 30, 2021. *Complaint ¶ 34.* Effective December 1, 2021, the Individual Defendants commenced

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work for a competitor of MUSC, Trident Medical Center, located in North Charleston. *Affidavit of Dr. Cawley ¶ 11; Affidavit of Dean DuBois ¶ 13; Complaint ¶¶ 3-4, 35.*

The development and protection of Plaintiffs' confidential and proprietary information.

Plaintiffs developed the aforementioned confidential and proprietary information over the course of the last two decades in building the HNO Division. *Dr. Cawley's Affidavit ¶ 16; Dean DuBois' Affidavit* ¶ 18. Plaintiffs' confidential and proprietary information is not available in the public domain. *Dr. Cawley's Affidavit ¶¶ 20, 28, 30, 32, 37; Dean DuBois' Affidavit* ¶¶ 22, 30, 32, 34, 39. Plaintiffs restrict access to their confidential and proprietary information, allowing access only to those individuals who have a legitimate need for the information. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.* Plaintiffs also maintain policies and procedures to protect this information from disclosure to unauthorized persons. *Dr. Cawley's Affidavit ¶¶ 21-22; Dean DuBois' Affidavit ¶¶ 23-24; Exhibit #5.* Of particular note, MUSC's Code of Conduct, which is part of the MUSC Faculty Handbook, explicitly prohibits employees from disclosing confidential information or using such information for the employee's personal benefit. *Exhibit #5.* MUSC's Faculty Handbook is part of the contract between the Individual Defendants and MUSC. *Id.* For persons attempting to access Plaintiffs' confidential and proprietary information remotely, Plaintiffs have implemented a two-factor authentication system to further protect their confidential and proprietary information. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.*

The Individual Defendants interfered with MUSC's head and neck fellowship program while employed by MUSC and while members of UMA and attempted to transport the fellows to Trident Medical Center.

MUSC's head and neck fellowship program ("HNO Fellowship Program") is one of fewer than fifty (50) accredited fellowship programs in the United States by the American Head and

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Neck Society ("AHNS"). *Affidavit of Dr. Cawley ¶ 42; Affidavit of Dean DuBois ¶ 42.* The HNO Fellowship Program has been continuously accredited since 2010. *Affidavit of Dr. Cawley ¶ 45.* Each academic year, MUSC employs two fellows who have completed their residency to work in the HNO Fellowship Program. *Affidavit of Dr. Cawley ¶ 40; Affidavit of Dean DuBois ¶ 40.* The fellows in MUSC's HNO Fellowship Program enter into contracts with MUSC, which require the fellows, among other things, to work as a fellow for MUSC for a one-year period of time. *Complaint ¶ 107.* As part of their fellowship, fellows in the HNO Fellowship Program receive the highest level of training in the management and surgical treatment of head and neck cancer patients. *Affidavit of Dr. Cawley ¶ 40; Affidavit of Dean DuBois ¶ 40.* The fellows participate in numerous operations during the course of their one-year fellowship. *Affidavit of Dr. Cawley ¶ 45(d); Affidavit of Dean DuBois ¶ 45(d).*

The HNO Fellowship Program provides unquantifiable reputational benefits and distinction to MUSC. *Affidavit of Dr. Cawley ¶ 43; Affidavit of Dean DuBois ¶ 43.* The HNO Fellowship Program assists MUSC in recruiting high-quality faculty members and in attracting research funding opportunities. *Id.* Through the HNO Fellowship Program, MUSC is able to train the next generation of head and neck cancer clinicians, and is able to extend and make more enjoyable the lives of those who have been touched by cancer. *Affidavit of Dr. Cawley ¶ 57; Affidavit of Dean DuBois ¶ 58.* The HNO Fellowship Program further plays a critical role in the innovation and research efforts of the HNO Division. *Id.*

Prior to his resignation, Defendant Neskey served as the Director of MUSC's HNO Fellowship Program. *Dr. Cawley's Affidavit ¶ 47; Dean DuBois' Affidavit ¶ 47.* While still serving as Director of the Program but after announcing his intent to resign from MUSC, Defendant Neskey attempted to interfere with and did in fact interfere with MUSC's contracts with

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its fellows in the HNO Fellowship Program. *Dr. Cawley's Affidavit* ¶¶ *48-51; Dean DuBois' Affidavit* ¶¶ *48-50; Complaint* ¶ *45.* Defendant Neskey did so in an effort to take the fellows from MUSC to Trident Medical Center. *Id.*

Without notice to or permission from anyone at MUSC, Defendant Neskey directly contacted AHNS, the accreditation body for the HNO Fellowship Program, and informed it of the Individual Defendants planned departure from MUSC. *Dr. Cawley's Affidavit* ¶ *50; Dean DuBois' Affidavit* ¶ *50; Exhibit #12.* Defendant Neskey did this so he, along with the other Defendants, could convince the existing fellows to breach their agreements with MUSC and join the Individual Defendants at Trident Medical Center. *Dr. Cawley's Affidavit* ¶ *48; Dean DuBois' Affidavit* ¶ *48; Exhibit #11.* Defendant Neskey also obtained a copy of MUSC's completed 2019 AHNS application packet. *Dr. Cawley's Affidavit* ¶ *51; Dean DuBois' Affidavit* ¶ *51.* Five days later, Defendant Neskey requested a blank AHNS application packet. *Id.* He did this so he, along with the other Defendants, could use the information on MUSC's 2019 application packet when completing a new application for Trident Medical Center. In short, Defendant Neskey made clear what the Defendants' plan was as it relates to the fellows. In Defendant Neskey's words, the Defendants' plan was to "hav[e] [the fellows] transition with us," to Trident Medical Center. *Dr. Cawley's Affidavit* ¶ *48; Dean DuBois' Affidavit* ¶ *48; Exhibit #11.*

Defendant Neskey and the Individual Defendants interfered with MUSC's HNO Fellowship Program to benefit all of the Defendants. MUSC's HNO Fellowship Program was an integral part of the success of the HNO Division. *Affidavit of Dr. Cawley* ¶ *46; Affidavit of Dean DuBois* ¶ *46.* Fellows play an important role in the HNO Division's ability to perform the complicated, multi-phase procedures that span ten (10) to fifteen (15) hours. *Affidavit of Dr. Cawley* ¶ *46; Affidavit of Dean DuBois* ¶ *46.* The fellows provide necessary physician-hours

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during these long and complicated procedures. *Id.* Without the fellows, the physicians themselves would be required to be present at all times for these long operations and/or Hospital Defendants would need to expend resources to hire or assign additional physicians to assist. *Id.* The Individual Defendants knew they needed fellows to perform the head and neck procedures so they tried to take the fellowship program from MUSC and deliver it to Trident.

MUSC's HNO Fellowship Program "is under attack," and Defendants are in "pursuit" of it. *Affidavit of Dr. Cawley ¶ 56.* As a result of the aforementioned actions, the HNO Fellowship Program has been harmed. The incoming fellows for academic year 2022-23 have been released from their commitments to MUSC, and it is unclear whether MUSC can participate in the fellowship match cycle for academic year 2023-24. *Affidavit of Dr. Cawley ¶ 53; Affidavit of Dean DuBois ¶ 53.* Dean DuBois offers an extremely insightful perspective on the Individual Defendants' conduct. Dean DuBois stated:

> Over my entire career, I have never seen or heard of a group of physicians engage in a wholesale abandonment of their students, colleagues, and patients similar to what the defendant physicians have orchestrated over the past several months. In the medical centers I have been associated with, like the Vanderbilt Medical Center in Nashville, Tennessee, from time to time physicians did leave to take an opportunity to work in the HCA Health System in Nashville, but these departures were carried out in an orderly well-timed fashion so that no harm came to any of the trainees or to the patients.

Affidavit of Dean DuBois ¶ 54.

The Individual Defendants and the Hospital Defendants worked together to solicit members of HNO Division from MUSC, and upon information and belief, the Hospital Defendants used the Plaintiffs' confidential and proprietary information to do so.

Plaintiffs' head and neck team consists of more than just physicians. *Affidavit of Dr. Cawley ¶ 10; Affidavit of Dean DuBois ¶ 12; Exhibit #3.* It is composed of a comprehensive multidisciplinary team of clinicians, including highly skilled nurses. *Id.* After the Individual

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Defendants informed MUSC of their intent to resign, other members of the team followed suit and upon information and belief, are or will be working at Trident Medical Center, along with the Individual Defendants. *Affidavit of Dr. Cawley ¶ 11 n.1; Affidavit of Dean DuBois ¶ 13 n.1.* For example, after the Individual Defendants resigned from MUSC, four nurses and approximately a dozen staff members resigned as well. *Id.*

Upon information and belief, the Individual Defendants, while employed by MUSC and while members of UMA, actively solicited these and other highly skilled individuals to quit their jobs with MUSC and to work for Trident Medical Center. *Complaint ¶¶ 89-92.* Additionally, upon information and belief, Trident Medical Center, when soliciting MUSC's employees, was in wrongful and unlawful possession of confidential and proprietary information belonging to the Plaintiffs, including, but not limited to, sensitive financial information about MUSC's operations. *Affidavit of Dr. Cawley ¶¶ 30-31; Affidavit of Dean DuBois ¶¶ 32-33; Complaint ¶¶ 92-94.* The Defendants worked together to unlawfully solicit MUSC's employees. *Complaint ¶ 90.*

There are many differences between the Hospital Defendants and MUSC.

Trident Medical Center has never performed complex head and neck procedures at Trident's North Charleston location. *Affidavit of Dr. Cawley ¶ 13; Affidavit of Dean DuBois ¶ 15.* Upon information and belief, Trident Medical Center does not have the equipment, manpower, and know-how to provide patients with the level of care that MUSC's HNO Division provides. *Affidavit of Dr. Cawley ¶ 14; Affidavit of Dean DuBois ¶ 16.* Mr. Timothy Brendle (the Chief Perioperative Operations Officer at MUSC) estimates it would take Trident Medical Center eight (8) to ten (10) years to independently grow the high-quality, multi-disciplinary HNO Division MUSC has developed. *Affidavit of Tim Brendle ¶ 7.*

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Trident Medical Center has a different mission than MUSC. Trident Medical Center is a for-profit hospital owned and operated by Defendant Trident Medical Center, LLC, which is owned by wholly owned subsidiaries of HCA. *Affidavit of Dr. Cawley ¶ 12; Affidavit of Dean DuBois ¶ 14; Complaint ¶¶ 3-4.* HCA is a for-profit operator of healthcare facilities that is publicly traded on the New York Stock Exchange and is obligated to earn profits for its shareholders. *Affidavit of Dr. Cawley ¶ 12; Affidavit of Dean DuBois ¶ 14; Complaint ¶ 3.*

In stark contrast to the Hospital Defendants, MUSC is a public health system with a tri-partite mission of education, research, and providing clinical care. *Affidavit of Dr. Cawley ¶ 12; Affidavit of Dean DuBois ¶ 14.* MUSC's mission is not to earn money for shareholders; MUSC's mission is to preserve and optimize human life in South Carolina and beyond through education, research, and patient care. *Affidavit of Dr. Cawley ¶ 15; Affidavit of Dean DuBois ¶ 17.*

MUSC's main hospital in Charleston is one of five Level I adult trauma centers in South Carolina. *Affidavit of David Levitt ¶ 10.* It is the only Level 4 NICU provider, and the only Level I pediatric trauma provider. *Id.* Trident Medical Center offers Level II trauma services and Intermediate Care level neonatal services. *Affidavit of David Levitt ¶ 11.* Trident routinely transfers many critically ill patients to MUSC because Trident lacks the ability to provide the necessary specialized care and resources to these patients. *Id.*

Analysis

A party seeking an injunction must establish three elements: (1) it would suffer irreparable harm if the injunction is not granted; (2) it would likely succeed on the merits of litigation; and (3) there is no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The purpose of an injunction is to preserve the status quo and prevent irreparable harm to the party seeking the relief. *Compton v. S.C. Dep't of*

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Corrs., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). "The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a ***reasonable question*** as to the existence of such a right." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009), *modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010) (emphasis added).[4] The party moving for the injunction must demonstrate that it "is ***reasonably necessary*** to preserve the rights of the parties during the litigation." *Compton*, 392 S.C. at 366, 709 S.E.2d at 642 (emphasis added).

I. Confidential and Proprietary Information

A. Plaintiffs will suffer irreparable harm if the Hospital Defendants are not ordered to stop using Plaintiffs' confidential and proprietary information and to return it.

Whether a wrong is irreparable in the sense that equity may intervene is not a question decided by narrow and artificial rules. *Peek v. Spartanburg Reg. Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005), *modified on other grounds by Poynter*, 387 S.C. at 587, 694 S.E.2d at 17 (citing *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939)). "Irreparable injury as used in the law of injunction, does not necessarily mean that the injury is beyond the possibility of compensation in damages." *Bethel M.E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947).

[4] *Poynter* modified the Court of Appeals' decisions in *AJG Holdings* and *Peek* (both cases authored by now Justice Hearn) only to clarify that the balancing of the equities is not an independent element in deciding whether an injunction should be issued. In *Poynter*, the Supreme Court made clear that "the balancing requirement is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test." 387 S.C. at 587, 694 S.E.2d at 17. *AJG Holdings* and *Peek* remain good law.

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Plaintiffs move for the following injunction related to the Individual Defendants' taking of their confidential and proprietary information and the sharing of this information with the Hospital Defendants. First, Plaintiffs move to prohibit the Hospital Defendants from *using* their confidential and proprietary information. Second, Plaintiffs move for the Hospital Defendants to *return* their confidential and proprietary information. Third, Plaintiffs move to prohibit the Hospital Defendants from *billing or collecting* money for services performed utilizing any of Plaintiffs' confidential and proprietary information. Fourth, Plaintiffs move to require the Hospital Defendants to *forever delete* any and all copies of any of Plaintiffs' confidential and proprietary information that is in their possession and to submit affidavits to the Court *confirming* this has taken place.

The essential facts of this case are not unique. There are many cases where employees have taken confidential and proprietary information belonging to their former employer, taken this information to their new employer, and the employee and new employer have used (or attempted to use) this information to compete with their former employer. Universally, courts show disdain for this type of conduct and routinely issue injunctions to protect the former employer's confidential and proprietary information. *See Milliken & Co. v. Morin*, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012) ("[A]n employer may restrain a former employee from disclosing and using confidential information which was developed as a result of the employer's initiative and investment and which the employee learned as a result of the employee relationship."). The case of *Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650 (D.S.C. Mar. 29, 2012) serves as an example of the willingness of South Carolina courts to enter injunctions in these types of situations. In addition to this, courts in South Carolina have issued injunctions in the following cases to protect the former employer's confidential and proprietary

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information: *Rockford Mfg., Ltd. v. Bennet*, 296 F.Supp.2d 681 (D.S.C. 2003), *Standard Lighting Distribs., Inc. v. Sweatman*, 2006 WL 4911571 (S.C. Com. Pl. 2006), *Lewallen Automation, LLC v. Lewallen*, 2014 WL 7925812 (S.C. Comm. Pl. 2014), and *Boone Ins. Agency, Inc. v. Lloyd*, No. 3:20-CV-02980-JMC, 2020 WL 5052956 (D.S.C. Aug. 27, 2020).

In *Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650, at 1 (D.S.C. Mar. 29, 2012), the employee worked as a salesperson for IPS, a distributor of packaging supplies. During his final week of employment with IPS, the employee scheduled appointments with numerous IPS customers in a coordinated attempt to convert IPS' customer base to his new employer, Unisource, which was engaged in the same business as IPS. *Id.* Immediately prior to his departure from IPS, the employee removed and disclosed proprietary and confidential information belonging to IPS and disclosed it to Unisource, so he and Unisource could unfairly compete with IPS. *Id.* Without an injunction, IPS feared that Martin and Unisource would use its confidential and proprietary information to unfairly compete with IPS and convert its customer base. *Id.* at *5. Under these facts, Judge Herlong enjoined the employee and Unisource from using, disclosing or transmitting IPS' confidential and proprietary information. Id. at *7. In addition, Judge Herlong enjoined the employee and Unisource from selling any product based in whole or in part on any confidential and proprietary information belonging to IPS. *Id.*

Another case worthy of discussion is *Lowndes Prods., Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). *Lowndes* illustrates two situations where the new employer (here the Hospital Defendants) faces liability for actions taken by a newly hired employee (Individual Defendants) with respect to his former employer (MUSC). First, the new employer is liable if the new employee brings the former employer's confidential and proprietary information to the new

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employer. Second, the new employer is liable if it uses information or gains an advantage deriving from the employee's breach of duties of loyalty and fidelity to his former employer.

Lowndes Products was engaged in the manufacture of a textile fabric. *Id.* at 325, 191 S.E.2d at 763. Three employees (Brower, Loftin, and Stanford), while still employed by Lowndes Products, solicited other current employees of Lowndes Products to join them in starting a competing company, B.L.S. Corporation. *Id.* at 334, 191 S.E.2d at 768. This was a breach of the three employees' duty of loyalty to Lowndes Products. *Id.* at 334-35, 191 S.E.2d at 768. In addition, the Lowndes Products employees took Lowndes Products "processes" for creating the finished product with them to B.L.S. Corporation. *Id.* at 333, 191 S.E.2d at 767. Under these facts, the Supreme Court held that B.L.S. Corporation was "jointly and severally" liable with the employees for any profits it received from the employee's wrongful conduct as it relates to his former employee. *Id.* at 337-38, 191 S.E.2d at 769-70. The Court pointed out that "B.L.S. Corporation has profited from the wrongful conduct of the parties that brought it into and should be held liable along with the individuals, jointly and severally." *Id.*

In this case, the affidavits of Dr. Patrick J. Cawley (the CEO of MUSC Health), Dr. Raymond N. DuBois (the Dean of the College of Medicine at MUSC), and Timothy Brendle (Chief Perioperative Operations Officer at MUSC Health, Charleston Division) establish that the Individual Defendants were in unlawful possession of confidential and proprietary information belonging to MUSC, and that the Individual Defendants have shared this information with the Hospital Defendants. The affiants identify the following information as confidential and proprietary data belonging to MUSC:

1. Physician preference cards,
2. Instrument lists,

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3. Financial information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC,

4. Financial information showing the salaries four of the Individual Defendants received while employed by MUSC,

5. Case logs for Defendant Day, and salaries for MUSC's residents and signed contracts for incoming fellows in the HNO Fellowship Program.

Dr. Cawley's Affidavit ¶¶ 17-20, 30-37; Dean DuBois' Affidavit ¶¶ 19-22, 32-39; Mr. Brendle's Affidavit ¶¶ 5-6.

The Individual Defendants were contractually prohibited from disclosing any of Plaintiffs' confidential information; likewise, they were contractually prohibited from using any of Plaintiffs' confidential information for their personal benefit. *Dr. Cawley's Affidavit ¶¶ 21-22; Dean DuBois' Affidavit ¶¶ 23-24; Exhibit #5.* Despite these contractual obligations, the Individual Defendants, while employed by MUSC and while members of UMA, obtained access to all of the aforementioned confidential and proprietary information. The Individual Defendants did not access this information for the legitimate business purposes of MUSC or UMA. Instead, the Individual Defendants accessed this information so they could use it to compete against MUSC while they worked for MUSC's competitor, the Hospital Defendants.

In the case of the physician preference cards and instrument lists, this information was sent directly to the Hospital Defendants via email transmission. *Dr. Cawley's Affidavit ¶¶ 23-25; Dean DuBois' Affidavit ¶¶ 25-27; Exhibits #6-7.* The rest of the confidential and proprietary information was obtained by the Individual Defendants prior to their departure from MUSC, *Dr. Cawley's Affidavit ¶¶ 32-39; Dean DuBois' Affidavit ¶¶ 30-37*, and upon information and belief, the Individual Defendants have provided such information to the Hospital Defendants. The irrefutable evidence demonstrates that the Individual Defendants were in possession of confidential and

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proprietary information belonging to Plaintiffs, and they have, at least with the physician preference cards and instrument lists, provided such information to the Hospital Defendants.

Plaintiffs took reasonable steps to protect the confidential and proprietary information from unauthorized disclosure. The confidential and proprietary information is not available in the public domain; access is limited only to those individuals who have a legitimate need to access it; policies and procedures safeguard this information from disclosure to unauthorized recipients; and a two-factor authentication system protects this information from remote access. *Dr. Cawley's Affidavit ¶¶ 20-22; Dean DuBois' Affidavit ¶¶ 22-24; Exhibit #5.* In addition, Plaintiffs contractually obligated the Individual Defendants in such a way as to preserve and protect their confidential information. *Dr. Cawley's Affidavit ¶¶ 21-22; Dean DuBois' Affidavit ¶¶ 23-24; Exhibit #5.*

Plaintiffs will suffer obvious irreparable harm if an injunction is not entered to protect their confidential and proprietary information. If such an injunction is not entered, Plaintiffs will be deprived of their confidential and proprietary information, and this information will be in the hands of a competitor. *See Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650, at *5 ("Courts consistently have recognized that the loss of permanent relationships with customers and the misappropriation of proprietary information constitutes irreparable harm to an employer."); *see also Peek*, 367 S.C. at 455 n.2, 626 S.E.2d at 37 n.2 ("[A]ppellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill."); *Nucor Corp. v. Bell*, No. 2:06-CV-02972-DCN, 2008 WL 9894350, at *20 (D.S.C. Mar. 14, 2008) (unreported) ("The loss of even a single trade secret is irreparable harm, and the threatened disclosure of a trade secret supports the imposition of injunctive relief."). As the affidavits of Dr. Cawley and Dean DuBois demonstrate, Plaintiffs spent two decades worth of time and countless amount of resources

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to develop their confidential and proprietary information. *Dr. Cawley's Affidavit* ¶¶ *6-7; Dean DuBois' Affidavit* ¶¶ *8-9.*

By contrast, the Hospital Defendants would suffer no harm if the Court entered an injunction protecting Plaintiffs' confidential and proprietary information. Two federal district courts in South Carolina have found that the defendants will suffer no harm at all when an injunction is issued protecting the confidential and proprietary information of the former employer, because all the injunction does is prevent the defendants from using information that does not belong to them in the first place. *Rockford Mfg.*, 296 F.Supp.2d at 685; *Boone*, 2020 WL 5052956, at *6. Here, if the Court grants the injunction that Plaintiffs seek with respect to their confidential and proprietary information, the Hospital Defendants would suffer no harm. The Hospital Defendants have no legal right to access or use Plaintiffs' confidential and proprietary information. Because they have no right to use the information, they will suffer no harm if the injunction is granted.

B. Plaintiffs have demonstrated a prima facie case, showing they are likely to succeed on the merits of their causes of action related to the Hospital Defendants' misappropriation and unlawful possession and use of their confidential and proprietary information.

The Court need examine the merits of the plaintiff's underlying claims "only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Compton*, 392 S.C. at 367, 709 S.E.2d at 642; *see Peek*, 367 S.C. at 456, 626 S.E.2d at 37 ("The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made."). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate [determination] of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C.

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29, 32, 413 S.E.2d 824, 826 (1991). "Prima facie evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." *LaCount v. Gen. Asbestos & Rubber Co.*, 184 S.C. 232, 192 S.E. 262, 266 (1937).

1. Plaintiffs can demonstrate a prima facie case under the South Carolina Trade Secrets Act.

Under the SCTSA, information may be a trade secret only if it "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code § 39–8–20(5)(a). "In order to decide whether something is a trade secret, one must consider the extent to which the information is known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others." *Wilson v. Gandis*, 430 S.C. 282, 315, 844 S.E.2d 631, 649 (2020).

Plaintiffs make the required prima facie showing under the SCTSA. The affidavits of Dr. Cawley and Dean DuBois identify the information that belongs to Plaintiffs that qualifies as trade secrets under the SCTSA.[5] The physician preference cards and instrument lists are in the hands of the Hospital Defendants. *Dr. Cawley's Affidavit ¶¶ 23, 25; Dean DuBois' Affidavit ¶¶ 25, 27; Exhibit #7.* The remaining trade secret information is, upon information and belief, in the hands of the Hospital Defendants. *Dr. Cawley's Affidavit ¶¶ 31, 33, 35-36; Dean DuBois' Affidavit ¶¶ 33, 35, 37-38; Exhibit #9-#10, #14-#15.*

[5] Plaintiffs' trade secret information consists of: 1. Physician preference cards, 2. Instrument Lists, 3. Financial information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC, 4. Financial information showing the salaries four of the Individual Defendants received while employed by MUSC, and 5. Case logs for Defendant Day, and salaries for MUSC's residents and signed contracts for incoming fellows in the HNO Fellowship Program.

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Plaintiffs benefit greatly from the fact that its physician preference cards, instrument lists, and case logs are not generally known to the public. This information enables Plaintiffs to perform complex, multi-faceted head and neck procedures to treat patients suffering from head and neck cancer. *Dr. Cawley's Affidavit ¶ 55; Dean DuBois' Affidavit ¶ 56.* Plaintiffs' financial information (both the amount of revenue generated by the Individual Defendants over the past ten (10) years and the salaries paid to them during this time) derives economic value from not being generally known. Likewise, the salaries of MUSC's residents and the signed contracts of its fellows also derive economic value from not being generally known for the same reasons. The secrecy of this information allows MUSC to be competitive against other hospitals and to compete against other accredited AHNS fellowship programs for residents and fellows.

Plaintiffs take reasonable steps to protect their confidential and proprietary information. Plaintiffs' confidential and proprietary information is not available in the public domain. *Dr. Cawley's Affidavit ¶¶ 20, 28, 30, 32, 37; Dean DuBois' Affidavit ¶¶ 22, 30, 32, 34, 39.* Plaintiffs limit access to their confidential and proprietary information only to those individuals who have a legitimate need to access it. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.* Plaintiffs also maintain policies and procedures to protect this information from disclosure to unauthorized persons. *Dr. Cawley's Affidavit ¶¶ 21-22; Dean DuBois' Affidavit ¶¶ 23-24; Exhibit #5.* For persons attempting to access Plaintiffs' confidential and proprietary information remotely, Plaintiffs have implemented a two-factor authentication system to further protect its confidential and proprietary information. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.* In addition, Plaintiffs contractually prohibit faculty physicians, including the Individual Defendants, from disclosing their confidential information and prevent them from using it for their own benefit.

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Exhibit #5. Under these facts, the Plaintiffs have satisfied the elements for a prima facie case for violation of the SCTSA.

2. Plaintiffs can demonstrate a prima facie case on their breach of duty of loyalty cause of action.

More fundamentally, and even if Plaintiffs' confidential and proprietary information does not constitute a trade secret under the SCTSA (which it does), the information still belongs to Plaintiffs. The Individual Defendants have taken information that belongs to Plaintiffs in breach of their duties of loyalty to Plaintiffs, and the Individual Defendants have provided this information to the Hospital Defendants, which seek to use it in competition with and to harm Plaintiffs.

To establish a claim for breach of duty of loyalty, a plaintiff must show the existence of a duty of loyalty, a breach of that duty by the defendant, and damages proximately resulting from the wrongful conduct of the defendant. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012). An employee owes a duty of loyalty to his employer to remain faithful to the employer's interests throughout the term of employment, to abide by his employer's instructions and policies, and to carry out those instructions and policies. *Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon*, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011); *Nucor Corp. v. Bell*, 482 F.Supp.2d 714, 727 n.9 (D.S.C. 2007); *Young v. McKelvey*, 286 S.C. 119, 122, 333 S.E.2d 566, 567 (1985); *Berry v. Goodyear Tire and Rubber Co.*, 270 S.C. 489, 491, 242 S.E.2d 551 (1978); *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). "Where an employee acts adversely to the interest of his employer, he is disloyal …." *Berry*, 270 S.C. 491, 242 S.E.2d at 551.

Here, the Individual Defendants have clearly breached their duties of loyalty to Plaintiffs. While employed by MUSC and while members of UMA, they took actions to take valuable information that belongs to Plaintiffs, and they have provided it to the Hospital Defendants. Under

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these facts, Plaintiffs have satisfied the elements for a prima facie case for breach of the duty of loyalty.

C. There is no adequate remedy at law to provide redress for the Hospital Defendants' unlawful possession of Plaintiffs' confidential and proprietary information, so an injunction should be issued.

Whether there is an adequate remedy at law is not a question decided by narrow and artificial rules. *Peek*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (citing *Kirk*, 191 S.C. at 211, 4 S.E.2d at 16). An injunction is appropriate "where no remedy at law exists or where the legal remedy would fail to make the party whole." *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 370, 588 S.E.2d 635, 639 (Ct. App. 2003). The loss of a trade secret is "difficult to measure in monetary damages because '[a] trade secret lost is, of course, lost forever.'" *Nucor Corp. v. Bell*, No. 2:06-CV-02972-DCN, 2008 WL 9894350, at *20 (D.S.C. Mar. 14, 2008) (unreported) (citing *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 62 (2d Cir.1984)).

Money alone cannot replace the loss of Plaintiffs' confidential and proprietary information. The value of such information is in its secrecy and exclusive use in the marketplace. Plaintiffs have developed their confidential and proprietary information over the course of two decades. Plaintiffs have developed this information in the name of research, training, and patient care, not in the name of shareholder profits. If the Hospital Defendants are allowed to use Plaintiffs' confidential and proprietary information, there is no way to make Plaintiffs whole for the damage they would sustain. The only way to protect Plaintiffs' confidential and proprietary information is to enjoin the Defendants from using it, require the return of it, and prohibit the Defendants from realizing any economic benefit from it.

D. The injunction would preserve the status quo.

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In addition, by issuing the injunction, the Court would preserve, rather than upset the status quo. *See Poynter Invs., Inc.*, 387 S.C. at 586, 694 S.E.2d at 17 (Injunctions should be issued only if necessary to preserve the status quo ante."). Here, the status quo is unmistakable: Plaintiffs are the rightful and sole owners of their confidential and proprietary information, and the Hospital Defendants have no right to this information. The Individual Defendants possessed a right to use Plaintiffs' confidential and proprietary information only as employees of MUSC and as members of UMA, and even then, the Individual Defendants had the right to use such information only for the legitimate business purposes of MUSC and UMA. The Individual Defendants had no right to use Plaintiffs' confidential and proprietary information for their own purposes, or for the purposes of MUSC's competitors. Likewise, the Hospital Defendants have no right to use Plaintiffs' confidential and proprietary information. The Defendants only have access to Plaintiffs' confidential and proprietary information because of the Individual Defendants' unlawful actions in obtaining this information and sharing it with their new employer. The Court would be preserving the status quo if it granted Plaintiffs' motion for injunctive relief and entered an order protecting Plaintiffs' confidential and proprietary information.

For the foregoing reasons, this Court should enter the injunction Plaintiffs seek with respect to their confidential and proprietary information. The Court should order the Hospital Defendants to do the following with respect to Plaintiffs' confidential and proprietary information: (1) stop *using* it; (2) *return* it; (3) prohibit the Hospital Defendants from *billing or collecting* money for services performed utilizing any of Plaintiffs' confidential and proprietary information;[6] (4) *forever delete* it and *submit affidavits* to the Court confirming this has taken place.

[6] This third-part of the injunction is essentially a derivation of the first-part of the injunction (if the Hospital Defendants cannot use the information, they cannot bill or collect money for services performed using it either). Further, it is a recognition that the law does not allow former

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II. Fellowship Program[7]

A. Plaintiffs will suffer irreparable harm if the Court does not enjoin the Hospital Defendants from interfering with MUSC's HNO Fellowship Program.

Plaintiffs seek an injunction to prevent the Hospital Defendants from interfering with MUSC's contractual relationships with the fellows in MUSC's HNO Fellowship Program.

MUSC's accredited Fellowship Program will not function without fellows, and thus without them, there would be no Program to be accredited. MUSC's accreditation through AHNS provides unquantifiable reputational benefits and distinction to MUSC. *Affidavit of Dr. Cawley ¶ 43; Affidavit of Dean DuBois ¶ 43.* The HNO Fellowship Program assists MUSC in recruiting high-quality faculty members and in attracting research funding opportunities. *Id.* Through the HNO Fellowship Program, MUSC is able to train the next generation of head and neck cancer clinicians, and is able to extend and make more enjoyable the lives of those who have been touched by cancer. *Affidavit of Dr. Cawley ¶ 57; Affidavit of Dean DuBois ¶ 58.* The HNO Fellowship Program also plays a critical role in the innovation and research efforts of the HNO Division. *Id.*

It took MUSC approximately seven (7) years to establish an AHNS accredited HNO Fellowship Program. *Affidavit of Dr. Cawley ¶¶ 40, 45; Affidavit of Dean DuBois ¶¶ 40, 45.* MUSC established a non-accredited fellowship program in 2003, and ultimately, the program obtained AHNS accreditation in 2010. *Id.* In fact, the cumulative rigor needed to obtain and maintain AHNS accreditation is reflected by the statistic that there are fewer than fifty (50) such

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employees, such as the Individual Defendants, to take the fruits of their former employer's work, provide it to their new employer, and use it for economic gain. *See Milliken*, 399 S.C. at 32, 731 S.E.2d at 293 ("[E]mployees sometimes carry with them to new employers inventions or ideas so related to work done for a former employer that in equity and good conscience the fruits of that work should belong to the former employer).

[7] The case law pertaining to the three elements a court must consider in deciding whether to enter an injunction is set forth above and will not be repeated in Roman Numerals II and III.

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accredited programs in the United States. *Affidavit of Dr. Cawley ¶ 42; Affidavit of Dean DuBois ¶ 42.*

Defendant Neskey has made the Defendants' plan clear—their plan is to "have [the fellows] transition with us" to Trident Medical Center. *Dr. Cawley's Affidavit ¶ 48; Dean DuBois' Affidavit ¶ 48; Exhibit #11.* Defendants have already taken initial steps to interfere with MUSC's HNO Fellowship Program. *Dr. Cawley's Affidavit ¶ 50; Dean DuBois' Affidavit ¶ 50; Exhibit #12.* If the Hospital Defendants are allowed to continue to interfere with MUSC's HNO Fellowship Program, the existence and continuation of MUSC's accredited HNO Fellowship Program will be in jeopardy. If MUSC loses its accredited HNO Fellowship Program, it will negatively impact MUSC's ability to do those things that the accredited Fellowship Program makes possible, such as recruit high-quality faculty members, attract research funding opportunities, and train the next generation of head and neck cancer clinicians. *Affidavit of Dr. Cawley ¶¶ 43-44, 57; Affidavit of Dean DuBois ¶¶ 43-44, 58.*

If MUSC's HNO Fellowship Program loses its accreditation status, the public will also suffer. *Affidavit of Dr. Cawley ¶¶ 57-58, 57; Affidavit of Dean DuBois ¶¶ 58-59.* MUSC's HNO Fellowship Program "has played a significant part in extending and making more enjoyable the lives of those who have been touched by cancer." *Id.* MUSC's HNO Fellowship Program has allowed MUSC to "continue with its mission to preserve and optimize human life in South Carolina and beyond through education, research and patient care." *Affidavit of Dr. Cawley ¶ 58, 57; Affidavit of Dean DuBois ¶ 59.*

MUSC will suffer obvious irreparable harm if an injunction is not entered: it may well lose its accredited HNO Fellowship Program. This type of harm is analogous to the loss of a business. Courts have issued injunctions to prevent the loss of a business and to protect business

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goodwill. *Peek*, 367 S.C. at 455 n.2, 626 S.E.2d at 37 n.2. On the other hand, the Hospital Defendants will suffer no harm if this injunction is entered. All the injunction would do is prohibit the Hospital Defendants from doing what they are prohibited from doing anyway—interfering with MUSC's contractual relationships with its fellows. *Rockford Mfg.*, 296 F.Supp.2d at 685; *Boone*, 2020 WL 5052956, at *6.

B. Plaintiffs can demonstrate a prima facie case for their civil conspiracy cause of action.

A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021).

The Individual Defendants, along with the Hospital Defendants, have conspired to unlawfully interfere with MUSC's HNO Fellowship Program and to transport the fellows in this program to Trident Medical Center. The Defendants have taken overt acts in furtherance of this conspiracy. Defendant Neskey has put the Defendants' plan in writing. *Exhibit #11.* Additionally, Defendant Neskey, without notifying Plaintiffs and without receiving their authorization to do so, contacted AHNS and attempted to discredit MUSC's HNO Fellowship Program by informing AHNS of the Individual Defendants' planned departure from MUSC. *Dr. Cawley's Affidavit ¶ 50; Dean DuBois' Affidavit ¶ 50; Exhibit #12.* Also, before the end of his employment with MUSC, Defendant Neskey obtained a copy of MUSC's completed 2019 AHNS application packet. *Dr. Cawley's Affidavit ¶ 51; Dean DuBois' Affidavit ¶ 51.* Five days later, Defendant Neskey requested a blank AHNS application packet. *Id.* These acts reflect the Defendants' clear intent to use the information on MUSC's 2019 application packet when Defendants complete a new

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application for Trident Medical Center. In terms of damage, because of Defendants' actions, AHNS has released the incoming fellows from their commitments to MUSC, and it is unclear whether AHNS will allow MUSC to participate in the fellowship match cycle for the following year. *Affidavit of Dr. Cawley ¶ 53; Affidavit of Dean DuBois ¶ 53.* Accordingly, Plaintiffs have demonstrated a prima facie case for a civil conspiracy cause of action.

C. Plaintiffs do not have an adequate remedy at law to provide redress for the loss of the accredited status of the HNO Fellowship Program.

As set forth above, it has taken MUSC seven (7) years to attain AHNS accreditation status with its HNO Fellowship Program. If the Hospital Defendants are allowed to interfere with MUSC's contractual relationships with its fellows, MUSC could lose its accreditation status with the AHNS. If the accreditation status were lost, it would take a significant amount of time and resources to attempt to attain accreditation once again, if that were even possible. As it relates to MUSC's HNO Fellowship Program, if it loses accreditation, money damages would be inadequate. The only adequate remedy to protect MUSC's accredited HNO Fellowship Program is an injunction to protect that program from interference by the Hospital Defendants.

D. If the Court were to issue the requested injunction, it would preserve the status quo.

If this Court were to issue the requested injunction, it would preserve the status quo, as it would ensure that the Hospital Defendants do not interfere with the contractual relationships with MUSC's fellows. In order for MUSC's HNO Fellowship Program to continue to keep its accredited status, its fellows must keep their one-year commitments to MUSC. MUSC's fellowship program "is under attack" from the Hospital Defendants, who are in "pursuit" of MUSC's fellows and are seeking to transport the fellowship program to Trident Medical Center.

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Affidavit of Dr. Cawley ¶ *56*. This Court should not allow the Hospital Defendants to engage in such unlawful conduct and should issue an order preserving the status quo.

III. Soliciting Plaintiffs' Employees in the HNO Division

A. Plaintiffs will suffer irreparable harm if the Court does not enjoin the Hospital Defendants from any further solicitation of employees in the HNO Division.

The thrust of Defendants' unlawful plan has been to steal MUSC's entire HNO Division (employees, fellows, and confidential and proprietary information) and deliver it to the Hospital Defendants. So far, Defendants have taken a great deal. They have taken numerous employees. They have reduced their plan to writing to take the fellows from MUSC to Trident Medical Center, and their interference with the fellowship program has caused MUSC to lose its committed fellows for the upcoming year and potentially to lose its ability to participate in the match cycle the following year. In addition, the Defendants have taken valuable confidential and proprietary information from Plaintiffs.

The disloyal Individual Defendants are no longer employees and members of Plaintiffs. This means they will no longer be able to actively take any more of the Plaintiffs' confidential and proprietary information. However, the solicitation of other MUSC employees (and fellows) began while the Individual Defendants were still employees of MUSC. Take for instance, an email sent from Dax Kurbegov, Physician in Chief of Clinical Programs of HCA, to Defendant Neskey while Defendant Neskey was still an employee of MUSC. In that email, Mr. Kurbegov invited Defendant Nesky to a meeting in Nashville with "HCA leaders." *Exhibit #16*. The meetings were to discuss Defendant Neskey's interest in working for Trident Medical Center, which is owned by HCA. *Id.* In Mr. Kurbegov's email, he acknowledges the unlawful solicitation that apparently was already underway from Defendant Day, when he states, "Terry Day may have already spoken to you about this opportunity." *Id.*

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From there, upon information and belief, the solicitation continued as Defendant Day (the ringleader) solicited the other Individual Defendants to resign from their positions with MUSC and work at Trident Medical Center. Then, upon information and belief, nurses, technicians, and staff were solicited as well by the Individual Defendants, and they too resigned and accepted employment with Trident Medical Center. *Affidavit of Dr. Cawley ¶ 11 n.1; Affidavit of Dean DuBois ¶ 13 n.1.*

The Defendants have worked together in this illegal solicitation of employees making up MUSC's HNO Division. Because this solicitation was illegal when it began, it should not be allowed to continue. In other words, the Individual Defendants breached their duties of loyalty to Plaintiffs by soliciting one another and the other individuals making-up MUSC's HNO Division to quit their employment with MUSC and work for the Hospital Defendants. *See Lowndes Prods.*, 259 S.C. at 335, 191 S.E.2d at 768 (noting employees have a duty to notify their employer if they know an employee is going to leave); *Berry*, 270 S.C. 491, 242 S.E.2d at 551 ("Where an employee acts adversely to the interest of his employer, he is disloyal ...."); *Sonoco Prods. Co. v. Guven*, No. 4:12-cv-00790-BHH, 2015 WL 127990, at *1 (D.S.C. Jan. 8, 2015) (unpublished) (finding an employee's solicitation of its employers' employees in forming a competitive business could constitute a breach of the duty of loyalty). The Hospital Defendants should not be allowed to continually benefit from this unlawful conduct. *See Lowndes Prods.*, 259 S.C. at 337-38, 191 S.E.2d at 769-70 (noting the new employer is jointly and severally liable for the wrongful conduct of disloyal employees and employees who bring confidential and proprietary information from their former employer).

This Court should not allow the continued theft of MUSC's HNO Division. If this Court were to allow it to continue, MUSC would experience continued irreparable harm, as it may

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experience a complete loss of its HNO Division. *See Peek*, 367 S.C. at 455 n.2, 626 S.E.2d at 37 n.2 ("[A]ppellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill."). This Court should not allow this to happen. *See* Ephesians 4:28 ("Let the thief no longer steal, but rather let him labor, doing honest work with his own hands ....").

B. Plaintiffs can demonstrate a prima facie case for their civil conspiracy cause of action.

As set forth above in Roman Numerals I and II and above in Roman Numeral III(A), Plaintiffs can demonstrate a prima facie cause of action for their causes of action for breach of duty of loyalty and civil conspiracy.

C. Plaintiffs do not have an adequate remedy at law to provide redress for the loss of their HNO Division.

It has taken MUSC more than two decades to create its HNO Division. *Affidavit of Dr. Cawley* ¶¶ *6-7; Affidavit of Dean DuBois* ¶ *8-9*. Prior to the *en masse* departure of members of MUSC's HNO Division, it was one of the largest programs in the country devoted to the care of the head and neck cancer patient. *Id.* MUSC's HNO Division cannot be rebuilt overnight, and if the Hospital Defendants are allowed to continue doing what was illegal in inception, Plaintiffs may be left without an HNO Division or with a crippled HNO Division. There is no remedy adequate to address this wrong either from the perspective of the Plaintiffs or the public at large. The public will suffer greatly if MUSC is no longer able to continue to act as a leading innovator to treat head and neck cancers.

D. If the Court were to issue the requested injunction, it would preserve the status quo.

If this Court were to issue the requested injunction, it would preserve the status quo, as it would ensure that the Hospital Defendants do nothing to further solicit employees from MUSC's HNO Division. Prior to Defendants engaging in this wrongful conduct, MUSC had a thriving

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HNO Division. This Court should preserve MUSC's HNO Division during the pendency of this action, so that it will not be totally eradicated by the Hospital Defendants' unlawful acts.

CONCLUSION

Plaintiffs respectfully move and request this Court to enter the following injunction:

1. Prohibit the Hospital Defendants from using Plaintiffs' confidential and proprietary information,

2. Require the Hospital Defendants to return Plaintiffs' confidential and proprietary information,

3. Prohibit the Hospital Defendants from billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information,

4. Require the Hospital Defendants to forever delete any and all copies of any of Plaintiffs' confidential and proprietary information that is in their possession and to submit affidavits to the Court confirming this has taken place,

5. Prohibit the Hospital Defendants from interfering with MUSC's contractual relationships with the fellows in MUSC's HNO Fellowship Program, and

6. Prohibit the Hospital Defendants from soliciting any of MUSC's employees supporting the HNO Division.

In addition to the foregoing, the Plaintiffs pray for such other and further relief as this Court may deem just and proper under the circumstances.

[*signature block to follow*]

Respectfully submitted,

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Columbia, South Carolina
December 8, 2021

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC.; TRIDENT MEDICAL CENTER, LLC; TERRY A. DAY; BETSY KAY DAVIS; JOSHUA D. HORNIG; ERIC J. LENTSCH; DAVID M. NESKEY; and ANAND K. SHARMA, Defendants.	Civil Action No. 2021-CP-10-05289 **TRIDENT MEDICAL CENTER, LLC'S MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION FOR TEMPORARY INJUNCTION**

Defendant Trident Medical Center, LLC ("Trident") by and through undersigned counsel, submits this Memorandum of Law in Opposition to the Motion for Temporary Injunction filed by Plaintiffs Medical University of South Carolina ("MUSC") and University Medical Associations of the Medical University of South Carolina ("UMA").

FACTS AND ALLEGATIONS

Plaintiffs commenced this litigation against HCA and Trident[1], and six physicians who were employed by UMA, after those physicians decided to move their employment from MUSC to Trident. Plaintiffs alleged various claims against the Defendant Physicians, including: (1) breach of duty of loyalty; (2) intentional interference with contractual relationships; (3) civil conspiracy; (4) breach of contract; (5) breach of contract accompanied by a separate fraudulent act; (6) S.C. Unfair Trade Practices Act; (7) S.C. Trade Secrets Act; (8) breach of covenant not to

[1] Plaintiffs also named HCA Healthcare, Inc. ("HCA") as a defendant in this lawsuit. As discussed more fully below and in the Rule 12(b)(2) Motion to Dismiss filed by HCA, Plaintiffs have not met their burden of establishing that the Court has personal jurisdiction over HCA, and given that, the Court cannot order injunctive relief against HCA.

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compete (against only three (3) of the physicians); (9) breach of contract accompanied by a fraudulent act (against only one of the physicians); and (11) temporary and permanent injunction. Of those claims, Plaintiffs alleged claims (2), (3), (6), (7) and (11) against Trident and HCA as well.

Piggy-backed onto those purported causes of action is the Plaintiffs' request that the physicians and Trident be enjoined from:

(1) Utilizing Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data;

(2) Maintaining (requiring the return of) all confidential and proprietary information taken, including, but not limited to instrument lists, patient lists, physician preference cards, and financial data;

(3) Billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards, and financial data;

(4) Interfering with MUSC's Fellowship Program in any way or recruiting any MUSC Fellow;

(5) Contacting any fellowship accreditation bodies regarding MUSC; and

(6) Recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA.

Plaintiffs subsequently decided to settle their claims against the six physicians and now are seeking injunctive relief only against HCA and Trident.[2] As discussed more fully below, Plaintiffs are not entitled to any legal relief or remedy against HCA or Trident. Simply put, Plaintiffs could not "force" the six physicians to keep their medical practices at MUSC. The six physicians were legally and contractually allowed to terminate their employment with UMA and to obtain new employment elsewhere. No law or agreement prohibits Trident from encouraging or allowing the physicians to move their medical practices to Trident. Upon the anticipation of the physicians'

[2] See Footnote 1.

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medical practice coming to Trident, there is no law or contract that prohibits Trident from advertising, or even "soliciting" for new staff positions and employees—even from employees at MUSC. As is clearly shown below, the documents such as instrument lists, physician preference cards, case logs and physician salary information are not protectable by MUSC or UMA as trade secrets, or confidential or proprietary; therefore, if Trident received such documents or information from the physicians or other employees at MUSC it did nothing wrong.

MUSC asks the Court to restrain trade and employment through what it wants to call a temporary injunction. The Court should not use the drastic and extraordinary remedy of injunctive relief to facilitate MUSC's attempt. The physicians were willing and able to move their medical practices to Trident. Plaintiffs should not be allowed to use litigation, or even the threat of it, to "punish" physicians who choose to work elsewhere, nor should they be allowed to "tie the hands" of the hospitals at which those physicians wish to work with needless injunctive relief. Trident, MUSC, and the six physicians all have patients to serve, and this ongoing litigation and the requested injunctive relief does absolutely nothing to benefit those patients.

STANDARD OF REVIEW

Although the decision whether to grant a motion for temporary injunction rests within the sound discretion of the court, *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007), precedent is clear that a court should not grant a motion for temporary injunction except as an extraordinary and drastic measure to preserve the status quo of the parties. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *see also LeFurgy v. Long Cove Club Owners Assoc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994).

Plaintiffs bear the heavy burden of demonstrating that the facts and circumstances warrant the issuance of a temporary injunction. *Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at

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689 (2006); *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984). This means that Plaintiffs' "entitlement to an injunction requires the [C]omplaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the [Plaintiffs] during the litigation." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002) (citing *Transcontinental Gas Pipe Line Corp. v. Porter,* 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969).

All elements of entitlement to an injunction must be established by Plaintiffs through verified facts. Generally, entitlement to an injunction cannot be established by allegations submitted merely upon "information and belief." *See Tallevast v. Kaminski*, 146 S.C. 225, 143 S.E. 796, 800 (1928); *Touchston v. McDermott*, 120 F. Supp. 2d 1055, 1059–60 (M.D. Fla.), *aff'd,* 234 F.3d 1133 (11th Cir. 2000). Furthermore, while Plaintiffs have the burden of demonstrating the necessity of the requested injunctive relief, the Court may consider the whole case—the showing made by the plaintiffs as well as that made by defendants—in determining whether to grant or deny Plaintiffs' Motion. *Alston*, 93 S.C. 553, 77 S.E. at 727-28. In fact, at the pre-trial stage the Court "can and ought to look into the merits, whether they present issues of law or fact, and consider them to the extent necessary to enable [the Court] to exercise [its] discretion wisely." *Id.*

For a preliminary injunction to be granted, Plaintiffs bear the burden of establishing that:

1. Plaintiffs would suffer irreparable harm if the injunction is not granted;
2. Plaintiffs are likely to succeed in the litigation; and
3. Plaintiffs have no adequate remedy at law.

Strategic Resources Co., 367 S.C. at 544, 627 S.E.2d at 689; *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

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ARGUMENT

The injunctive relief requested by Plaintiffs cannot be granted against HCA or Trident. The Motion for Temporary Injunction must be denied. Plaintiffs simply have not established their entitlement to the extraordinary relief they seek.

The defects in Plaintiffs' Motion seeking to enjoin HCA and Trident, and their failure to satisfy the essential burdens and conditions to justify the Court granting them the relief requested against HCA and Trident are set forth in greater detail below.

1. **This Court lacks personal jurisdiction over Defendant HCA and in the absence of such jurisdiction it may not impose an injunction on HCA.**

The Court must have jurisdiction over HCA to issue an injunction that is binding on HCA. *See* Rule 65(d), SCRCP; *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999) (stating that "a party cannot obtain injunctive relief against another without first obtaining *in personam* jurisdiction over that person"). As demonstrated by HCA's Motion to Dismiss for lack of jurisdiction pursuant to Rule 12(b)(2), Plaintiffs have not satisfied their burden of establishing that the Court has personal jurisdiction over HCA. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

Rule 65 of the South Carolina Rules of Civil Procedure governs the issuance of temporary injunctions. *Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 608, 790 S.E.2d 430, 434 (Ct. App. 2016). Rule 65(d), SCRCP, plainly states that an injunction is binding only upon the parties to an action. Without jurisdiction over HCA, no injunction issued by the Court is binding over HCA. Moreover, any order issued that purports to enjoin HCA—an entity over whom the Court lacks jurisdiction—is void and has no legal effect. *See Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 617-18, 799 S.E.2d 310, 316 (Ct. App. 2017); *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

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Accordingly, the Court must deny any request for injunctive relief relating to HCA on the grounds that the Court lacks the authority to issue an injunction that is binding on an entity over whom the Court lacks jurisdiction.

2. **Plaintiffs purported causes of action against HCA and Trident fail as a matter of law and, thus, cannot support any injunctive relief against the Defendants.**

Plaintiffs must allege facts sufficient to state a cause of action in order to prove their entitlement to an injunction. *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (citing *County of Richland v. Simpkins,* 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002)). Plaintiffs cannot merely state self-serving conclusory allegations and recite the legal elements of a claim. They must allege facts sufficient to establish the three elements of a claim for temporary injunctive relief: (1) Plaintiffs will suffer immediate, irreparable harm without the injunction; (2) Plaintiffs have a likelihood of success on the merits; and (3) Plaintiffs have no adequate remedy at law. *Id.* (citing *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908). When a plaintiff fails to allege facts establishing the purported claim for injunctive relief, the cause of action should be dismissed and the requested relief denied. *See* Rule 8, SCRCP; *Jones v. Gilstrap*, 288 S.C. 525, 528, 343, S.E.2d 646, 648 (Ct. App. 1986); *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 433, 665 S.E.2d 660, 665 (Ct. App. 2008).

Moreover, for purposes of obtaining an injunction, Plaintiffs cannot succeed on allegations based on "information and belief." Complaints that fail to state more than general allegations based upon "information and belief" related to the elements for a claim for temporary injunction are insufficient. *See S.C. Pub. Serv. Auth. v. Carolina Power & Light Co.*, 244 S.C. 466, 473-74, 137 S.E.2d 507, 509 (1964) ("While the complaint contains the general allegation that the plaintiff will suffer irreparable injury, there is no factual allegation to support it. This is insufficient to constitute a cause of action for injunctive relief."); *Knohl v. Duke Power Co.*, 260 S.C. 374, 376,

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196 S.E.2d 115, 116 (1973) (holding that a "complaint fails to state a cause of action for injunctive relief unless facts are alleged which show that the plaintiff has no adequate and complete remedy at law").

Plaintiffs have failed sufficiently even to allege a valid claim for injunctive relief and they utterly fail to meet their burden to establish a valid cause of action for injunctive relief. Plaintiffs' submissions to the Court (Complaint, Motion, Affidavits and Exhibits) are overwhelmingly premised not upon facts, but only upon "information and belief." A request for the issuance of an injunction must be based upon facts—not the Plaintiffs' unsupported beliefs. *See Tallevast v. Kaminski*, 146 S.C. 225, 143 S.E. 796, 800 (1928) (citing *Pickman v. Georgetown Cty.*, 130 S.C. 18, 125 S.E. 191 (1924); *see also Pickman*, 130 S.C. 18, 125 S.E. 191 (1924) ("[A]n injunction . . . ought not to issue upon allegations made on information and belief, without the sources of such information and the grounds of belief being given."); *Touchston v. McDermott*, 120 F. Supp. 2d 1055, 1059–60 (M.D. Fla.), *aff'd,* 234 F.3d 1133 (11th Cir. 2000) ("[W]hen the primary evidence introduced is an affidavit made on information and belief rather than on personal knowledge, it generally is considered insufficient to support a motion for preliminary injunction." (quoting 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2949 (2d ed.1995)).

In order to qualify for and obtain injunctive relief, it is also necessary for a plaintiff to act on its alleged rights and to seek relief in a timely fashion. *Arceneaux v. Arrington*, 284 S.C. 500, 502-03, 327 S.E.2d 357, 358 (Ct. App. 1985). Plaintiffs failed to timely assert any of their rights in this case. According to the Complaint, the defendant physicians gave notice that they were resigning their positions with MUSC and UMA in July and August 2021. (Complaint ¶ 34). Thereafter, Plaintiffs sat on their alleged rights through September, October, and most of November, not filing their Complaint or seeking an injunction until November 22, 2021.

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Prior to Plaintiffs' filing of the Complaint, Trident spent or committed, through purchase orders, approximately $9 million dollars for the acquisition of equipment, surgical instrumentation, office space, furniture, and fixtures for the new facility. (Miller Affidavit ¶ 6). Additionally, Trident has reserved at least an additional $6.1 million dollars to procure additional goods to support the physicians' practice. (Miller Affidavit ¶ 7). South Carolina law does not allow Plaintiffs to sit on their rights while Trident takes action, incurs expenses, and enters into obligations constituting a change in its positions. *See Mack v. Edens*, 306 S.C. 433, 435–36, 412 S.E.2d 431, 433 (Ct. App. 1991) ("[I]f a party, knowing his rights, does not seasonably assert them, but by unreasonable delay suffers his adversary to incur expense or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights, especially if an injunction is asked."). In this case, Plaintiffs unreasonably delayed in attempting to enforce the rights they now claim. Because of this delay, they do not qualify for the injunction they now seek.

3. **Plaintiffs have not, and cannot, show that they will suffer irreparable harm if the Motion is denied.**

It is fundamental that an injunction cannot issue unless Plaintiffs satisfy their heavy burden of demonstrating that they **will** suffer an irreparable harm if the temporary injunction is not issued. *Twin City Power Co. v. Savannah River Electric Co.*, 163 S.C. 438, 161 S.E. 750 (1930), *app. dism'd*, 284 U.S. 574, 52 S. Ct. 17 (1931); *see also S.C. Pub. Serv. Auth.*, 244 S.C. at 474, 137 S.E.2d at 509-10.

To satisfy this burden, Plaintiffs must demonstrate "more than the mere 'possibility' of being irreparably harmed; rather, the [Plaintiffs] must 'demonstrate that irreparable injury is likely in the absence of an injunction.'" *George Sink, P.A. Inj. Laws. v. George Sink II L. Firm LLC*, 407 F. Supp. 3d 539, 559 (D.S.C. 2019), *modified sub nom. George Sink PA Inj. Laws. v. George Sink*

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II L. Firm LLC, No. 2:19-CV-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019) (emphasis in original).

It is not enough for Plaintiffs to assert or argue that the irreparable harm is "merely problematic" or "conditioned on possible future events." *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1991). Plaintiffs must present probative evidence that there exists a "present threat of irreparable harm." *Id.*

In this case, Plaintiffs have couched their allegations of irreparable harm as being "potential." Specifically, in their Motion for Temporary Injunction (Page 6, Section II), Plaintiffs candidly admit "MUSC's Head and Neck Fellowship Program faces potential irreparable harm without issuance of this requested injunctive relief." (emphasis added). Mere potential irreparable harm is not sufficient to satisfy the requirement for existing or likely irreparable harm in order to justify injunctive relief. *See S.C. Pub. Serv. Auth.*, 244 S.C. at 474, 137 S.E.2d at 509-10.

Because, as shown in other sections of this Memorandum, there is no viable assertion or claim of a trade secret complying with the Trade Secrets Act, there is no presumption of irreparable harm applicable in this case. *Atwood Agency v. Black*, 374 S.C. 68, 72-73, 646 S.E.2d 882, 884 (2007).

4. **Plaintiffs are not likely to be successful on the merits.**

In order to find that Plaintiffs have established a likelihood of success on the merits, the Court must conclude that Plaintiffs have established:

> a probability (not mere possibility) of success of the ultimate trial on the merits. "Probability of success" implies that the plaintiff must have a very clear and strong case. Some courts have stated this in terms by the maxim that in considering preliminary injunctive relief "to doubt is to deny." That is, if there is doubt as to the probability of plaintiff's ultimate success on the merits, the preliminary injunction must be denied.

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Direx Israel, Ltd., 952 F. 2d at 813 (citing 2 McCarthy on Trademarks and Unfair Competition, §30.16, at 485-86 (2d ed. 1980)).

Because Plaintiffs have specifically and expressly grounded their Motion for a Temporary Injunction on the South Carolina Trade Secrets Act ("Plaintiffs seek preliminary injunctive relief in accordance with the South Carolina Trade Secrets Act . . ."), it is necessary and critical to assess whether Plaintiffs have established that they are likely to succeed on the merits of their Trade Secrets Act claim. Examination of that issue leads overwhelmingly to the conclusion that Plaintiffs are not likely to be successful on the merits.

In this case, Plaintiffs have alleged their Trade Secrets Act Cause of Action in only the broadest most conclusory terms. They simply say (*ipse dixit*) that the information at issue in this case "is proprietary to MUSC and UMA." (Complaint ¶ 128). They merely say the information has independent economic value. (Complaint ¶ 129). They simply conclude that they make "reasonable efforts to maintain the secrecy . . . including but not limited to confidentiality agreements." (Complaint ¶ 130).

To the contrary, other allegations of the Complaint, the Exhibits attached to the Complaint, and the Affidavits filed in support of the Motion for Temporary Injunction reveals a more complete, and very different, story. In particular, facts (rather than merely self-serving conclusory statements) reveal:

a. The instrument lists and physician preference cards at issue in the case were developed by the six Defendant Physicians based on their know-how. (Affidavit of Timothy Brendle, ¶ 4 – "defendant Day and others on the Head and Neck team began developing the processes, procedures, and staffing requirements . . . ."). (Affidavit of Timothy Brendle, ¶ 5 – "Defendants Day, Hornig, Lentsch, and

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Neskey collectively have developed over 100 preference cards over the years for a broad range of specialized procedures.")

b. The "confidentiality obligations imposed on MUSC employees – which MUSC and UMA conclude to be "reasonable efforts to maintain the secrecy," consists of no more than a provision of the so-called "Code of Conduct" incorporated in the bowels of the so-called "MUSC Faculty Handbook." (Affidavit of Raymond N. Dubois, ¶ 24) This Handbook, and the incorporated Code of Conduct are Exhibit 5 to the Complaint. The totality of these so-called "confidentiality obligations" imposed by MUSC is the statement, "No employee shall disclose confidential information or use such information for his or her personal benefit."

c. Nowhere does MUSC allege that it identified, to the physicians or anyone else, what was claimed to be "confidential information."

d. Nowhere does MUSC allege that the "instrument lists," "patient lists," "physician preference cards," or "financial data" placed at issued in the Motion for Temporary Injunction were identified to anyone, or labeled in any way as "Trade Secret," or "confidential," or "proprietary" at any time prior to the allegations in this case.

e. It is a fact that the "instrument lists" and "physician preference cards" which are alleged in this case to have been provided to Trident were not: (i) labeled or identified in any way as involving or belonging to MUSC or UMA; (ii) labeled or identified in any way as being "Trade Secret;" or (iii) labeled or identified in any way as being "confidential" or "proprietary."

f. The evidence (Plaintiffs' Master Exhibits 6 and 7) reflects that the transmissions of those lists and cards to Trident were by employees of MUSC using MUSC emails, and there is no allegation or evidence that Trident knew such lists or cards had been

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misappropriated from MUSC or that the transmissions of those lists and cards (by way of MUSC employees and MUSC email system) were not authorized.

It is axiomatic that there can be no claim or protection available under the Trade Secrets Act unless Plaintiffs establish that there is a trade secret. To constitute a trade secret, the information must be secret. *Carolina Chem. Equip., Co. v. Muckenfuss*, 322 S.C. 289, 296, 471 S.E.2d 721, 724 (Ct. App. 1996). When the information claimed to be a trade secret is readily ascertainable from other sources, it does not qualify for protection under the Trade Secrets Act, S.C. CODE ANN. §39-8-20 (5). Information does not qualify for trade secret protection when the information can, with reasonable effort, be properly acquired or duplicated by or through others. *See Carolina Chem. Equip., Co.*, 322 S.C. at 296, 471 S.E.2d at 724.

While one of the alleged trade secrets at issue in this case is "financial information" such as physician salaries, in *Campbell v. Marion Cty. Hospital Dist.*, 354 S.C. 274, 289, 580 S.E.2d 163, 170 (Ct. App. 2003), the court held that such information does not constitute a trade secret and is not even exempted from FOIA by a public hospital. So, Plaintiffs cannot succeed on a claim to protect or restrict access to such information.

More broadly, a person otherwise entitled to trade secret protection must take all proper and reasonable steps to keep it secret, in order to maintain legal protection. *See Lowndes Prod., Inc. v. Brower*, 259 S.C. 322, 331, 191 S.E.2d 761, 766 (1972). When Plaintiffs fail to demonstrate that they, in fact, took proper and reasonable steps to protect their alleged secrets – and how they did that – their lack of proper precautions supports the conclusion that a secret (or its protection) was not intended and does not exist. *See id.* at 329, 191 S.E.2d at 765. As the Supreme Court of South Carolina declared:

> [E]ternal vigilance in the form of constant warnings to all persons to whom the trade secret has become known and obtaining from each

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> an agreement, preferably in writing, acknowledging its secrecy and promising to respect it, is required.

Id. at 331, 191 S.E.2d at 766.

In order to establish that it has taken proper and reasonable steps to protect trade secrets, a plaintiff must exercise "eternal vigilance," and prove it has taken steps to provide "constant warnings to all persons to whom the trade secret has become known" along with requiring an acknowledgement from such persons that they have been advised of the secrecy of the information and a promise to respect it, preferably in writing. *Id.* Further, South Carolina law is clear that "warnings alone are insufficient to place a trade secret within the sphere of protection provided by the [Trade Secrets] Act." *Hill Holliday Connors Cosmopulos, Inc. v. Greenfield*, 433 Fed App's 207, 215 (4th Cir. 2011). In order to enjoy protection under the Trade Secrets Act, a plaintiff must demonstrate reasonable efforts to maintain secrecy and "isolated steps" toward secrecy are not enough. *See Lowndes Prods.*, 259 S.C. at331, 191 S.E.2d at 766.

In addition to Plaintiffs' failure to demonstrate that they took proper and reasonable steps to protect the purported trade secrets, Plaintiffs' make no substantiated allegation that Trident or HCA knew or should have known the physician cards, equipment lists, and case logs were considered to be Plaintiffs' trade secrets. In fact, as stated in the affidavits of Dr. Horwich and Elaine Meuli, this information (equipment cards, lists, and case logs) is not confidential, proprietary, or considered to be a trade secret. (Horwich Affidavit ¶¶ 7, 8); (Meuli Affidavit ¶¶ 7 -13).

5. **Plaintiffs have an Adequate Remedy at Law**

It is fundamental that Plaintiffs can only establish an entitlement to injunctive relief if they meet the burden of demonstrating to the Court that they have no adequate remedy at law. "The party seeking an injunction must prove it has no adequate remedy at law." *Milliken & Co. v.*

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Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009), *aff'd as modified*, 399 S.C. 23, 731 S.E.2d 288 (2012) (citing *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689).

This means that Plaintiffs must show the Court it is impracticable for them to obtain full and adequate compensation at law. *Nutt Corp. v. Howell Rd., LLC,* 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) (citation omitted). This means that due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). However, in this case Plaintiffs have alleged an entitlement to money damages for each and every cause of action. Because the availability of money damages destroys the contention that there is no adequate remedy at law, Plaintiffs' own Complaint and the allegations therein reflects that there is available an adequate remedy at law. *See Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 860 S.E.2d 687, 693 (Ct. App. 2021) (finding a plaintiff who asserted claims for monetary damages and was unsure if it would suffer an irreparably injury was not entitled to injunctive relief); *Hughes Network Systems, Inc. v. InterDigital Communications Corp.*, 17 F.3d 691 (4th Cir. 1994) (noting the presumption that preliminary injunctions will not issue in cases where the harm suffered may be remedied by money damages); *Macro Specialties, Inc. v. Legacy Cir. Enterprises, LLC*, No. 3:12-CV-1274-JFA, 2021 WL 1963597, at *1 (D.S.C. May 31, 2012) (holding that plaintiff's claims for monetary damages provide an adequate remedy and "obviate the need for an injunction").

6. **Plaintiffs' requested relief is improperly vague, ambiguous, and overbroad.**

Rule 65(d) provides,

> Every order granting an injunction ... *shall* set forth the reasons for its issuance; **shall be specific in terms**; **shall describe in reasonable detail**, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action ....

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(emphasis added). The use of the word "shall" means an action is mandatory. *Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 608-09, 790 S.E.2d 430, 434 (Ct. App. 2016).

In this case, Plaintiffs' requested "injunctive relief" lacks the necessary specificity. For instance, Plaintiffs seek an Order prohibiting Defendants from "recruiting or soliciting, or otherwise contacting" MUSC employees regarding any potential employment. However, the term "solicit" is ambiguous and, therefore, an injunction prohibiting the Defendants from "further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA" is improperly vague and ambiguous and lacks the necessary specificity for the issuance of an injunction. *See Omnicare, Inc. v. Henwood*, No. CIV.A.02C03208WCC, 2003 WL 22290905, at *1 (Del. Super. Ct. Oct. 2, 2003) (holding that the term "solicit" "can encompass a wide range of possible conduct" and, therefore, is ambiguous).

Similarly, Plaintiffs seek an Order prohibiting "Defendants from further utilizing Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data" (emphasis added); "billing or collecting money for services performed utilizing any of Plaintiffs' confidential or proprietary information, including instrument lists, patient lists, physician preference cards, and financial data" (emphasis added); further interfering with MUSC's Fellowship Program in any way or recruiting any MUSC Fellow" (emphasis added); "further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents and Fellows regarding any potential employment with HCA," (emphasis added).

Trident cannot possibly conform behavior to an injunction (or any restriction) which does not define what it means to "solicit," or "contact," or "recruit," or "utilize." Similarly, it is not possible to conform to a restriction "including," but not limited to, same things. What else will

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MUSC and UMA assert was included when they desire to take further disruptive action against Trident. The law does not sanction such uncertainty.

The same is true about a restriction on "utilizing" information. How does one possibly understand the restriction imposed upon it not to "utilize" information. Imposing the threat of contempt on a party based on such non-specific, vague and ambiguous terms cannot be condoned. South Carolina law does not allow it.

7. **The proposed Injunction has the direct effect of binding and limiting (enjoining) persons not party to this action.**

In their proposed injunction, Plaintiffs seek to restrict the ability of HCA or Trident to recruit (employ) "any MUSC Fellow," and any "current MUSC and UMA employee, associates, agents and fellows regarding any potential employment with HCA." However, in July 2021, the Biden Administration issued an executive order specifically directing that the FTC undertake rulemaking to restrain the use of non-compete clauses and other contractual restrictions that limit employee mobility in the health care industry. In fact, the Department of Justice (DOJ) has commenced criminal prosecutions against companies and executives in the healthcare industry who are alleged to have agreed to so-called "No-Poach Agreements," which are agreements among employees to not hire or solicit each other's employees. *See U.S. v. DaVita Inc. and Kent* Thiry, Criminal Action No. 21-cv-00229-RBJ (U.S.D.C. – D. Colo.).

In the present case, Plaintiffs ask the Court to issue an injunction order requiring the parties to do that which they could not legally do by agreement. Such a request is misplaced and wrong. This Court should not take the bait and should deny the Motion for Temporary Injunction.

Injunctive relief prohibiting the movement of employees is not favored and has a negative effect on employment and trade. *See Cox v. Altus Healthcare & Hospice, Inc.*, 706 S.E.2d 660, 664 (Ga. Ct. App. 2011) (holding that a covenant precluding unsolicited contact with former

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employees is unenforceable). As recognized by the court in *Orkin Exterminating Co. v. Martin Co.*, 240 Ga. 662, 666, 242 S.E.2d 135, 138-39 (1978), "Overly-restrictive covenants in employment contracts or other similar considerations which place a restraint upon the free movement of employees in the marketplace as opportunity, experience and competition permits is contrary to this court's view of fair competition." In fact, such restrictions on HCA and Trident—which also cause similar restrictions for MUSC Fellows, employees, associates and agents—are fundamentally improper.

8. **Plaintiffs have not made an adequate showing to warrant the imposition of the extraordinary remedy of an injunction against HCA or Trident in this case.**

The issuance of an injunction is a drastic and extraordinary equitable remedy. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). Plaintiffs have failed to present any evidence or argument through which the Court may determine that equity favors the issuance of an injunction having the potential effect of limiting or prohibiting Trident and the Defendant physicians from providing medical treatment to head and neck cancer patients in need of such treatment. Plaintiffs ask the Court to enjoin Trident "from billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information" (emphasis added) which they say includes the instrument lists and physician preference cards. Those are the same lists and cards which Plaintiffs' own witness swore in an Affidavit had been developed by the physicians themselves utilizing their knowledge and experience. Thus, Plaintiffs' seek to prevent Trident from having those services performed at its hospital (since it would be prohibited from billing and collecting for the services and procedures). It is clear by this proposed injunction, MUSC seeks to prevent cancer patients from having their needed surgeries performed. Such request by MUSC and UMA is shocking and untenable. As discussed above, it is not in the public

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interest for an injunction to restrict or prohibit the delivery of necessary medical services or employment opportunities and choices for persons not even party to this case.

In exercising this drastic and extraordinary equitable power in relation to a healthcare provider, courts frequently issue rulings based upon the outcome that allows for the continuation of medical services to patients. *See Wound Care Centers, Inc. v. Catalane*, No. CIV.A. 10-336, 2011 WL 553875 (W.D. Pa. Feb. 8, 2011) (denying a request for an injunction barring the defendants from providing treatment to patients based upon a process the plaintiff argued was a trade secret). In this case, the affidavit of Dr. Horwich confirms that, contrary to the rank speculation by Plaintiffs expressed in "upon information and belief" allegations, Trident is capable of providing the necessary medical services to the head and neck cancer patients. (Horwich Affidavit ¶ 16). In fact, the head and neck oncology reconstructive practice is currently performing surgeries for patients in need of such care. (Horwich Affidavit ¶ 16). In addition to being capable of actually providing the medical services, Trident's facilities are brand new, state-of-the-art, and the best instruments and supplies available for purchase today. (Horwich Affidavit ¶ 17). In fact, the surgical equipment provided at Trident is the best collection of equipment for the treatment of head and neck oncology patients that he has ever seen in any setting, and Dr. Horwich formerly practiced at MUSC. (Horwich Affidavit ¶ 17).

In constructing this state-of-the-art facility, Trident has spent or committed approximately $9 million dollars for the acquisition of equipment, surgical instrumentation, office space, furniture, and fixtures necessary for the physicians to practice medicine in the field of head and neck oncology. (Miller Affidavit ¶ 6). Additionally, Trident has reserved at least an additional $6.1 million dollars to procure additional goods to support the physicians' practice. (Miller Affidavit ¶ 7).

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Furthermore, the "sole purpose of a temporary injunction is to preserve the status quo" and prevent irreparable harm. *Powell v. Immanuel Baptist Church,* 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The status quo is not preserved if patients are barred from receiving necessary medical treatment from their chosen doctors at their chosen healthcare provider. Rather, the requested injunction only serves to disrupt the status quo, prevent free and fair competition for medical services and bar head and neck cancer patients from receiving necessary treatment.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for Temporary Injunction should be DENIED.

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, vs. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ANAND K. SHARMA, Defendants.	Case No. 2021-CP-10-05289 **PLAINTIFFS' REPLY MEMORANDUM OF LAW**

The Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") submit this Reply Memorandum in regards to their Motion for Temporary Injunction.

ARGUMENT

I. NO "LABEL" IS REQUIRED UNDER THE SCTSA.

During the motion hearing, counsel for Trident Medical Center, LLC and HCA Healthcare, Inc. (collectively "Hospital Defendants") argued that Plaintiffs' Motion for Temporary Injunction should fail because Plaintiffs did not label their confidential and proprietary information with the words "confidential." The Hospital Defendants' argument presupposes that in order for documents and information to enjoy protection under the South Carolina Trade Secrets Act ("SCTSA"), they must be marked "confidential." The Hospital Defendants cite no legal support for this position. They cite no legal support for this position because none exits. In order for a document or piece

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of information to have trade secret protection under the SCTSA, a party is only required to engage in reasonable efforts to maintain the secrecy of the documents or information. S.C. Code § 39–8–20(5)(a). There is no requirement that documents or information be marked "confidential."

Here, Plaintiffs clearly took reasonable steps to protect their confidential and proprietary information. Plaintiffs limit access to their confidential and proprietary information only to those individuals who have a legitimate need to access it. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.* Plaintiffs also maintain policies and procedures to protect this information from disclosure to unauthorized persons. *Dr. Cawley's Affidavit ¶¶ 21-22; Dean DuBois' Affidavit ¶¶ 23-24; Exhibit #5.* For persons attempting to access Plaintiffs' confidential and proprietary information remotely, Plaintiffs have implemented a two-factor authentication system to further protect its confidential and proprietary information. *Dr. Cawley's Affidavit ¶ 21; Dean DuBois' Affidavit ¶ 23.* In addition, Plaintiffs contractually prohibit faculty physicians, including the Individual Defendants, from disclosing their confidential information and prevent them from using it for their own benefit. *Exhibit #5.*

II. THE CONFIDENTIAL INFORMATION BELONGS TO THE PLAINTIFFS.

The Hospital Defendants never argued that the information at issue belongs to them. It does not. As the Court observed in the settlement agreement with the Individual Defendants, the Individual Defendants agreed to destroy Plaintiffs' confidential and proprietary information (physician preference cards, case logs, instrument lists, and other financial information) and to not use this information going forward. During the motion hearing, the Hospital Defendants argued that some of Plaintiffs' confidential and proprietary information (particularly the case logs) belonged to the Individual Physician Defendants, but the settlement agreement between the Plaintiffs and the Individual Defendants demonstrates otherwise. The Hospital Defendants never

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argued that Plaintiffs' confidential and proprietary information belongs to the Hospital Defendants. They did not argue this because it does not. Therefore, for all of the Hospital Defendants' attempts to maneuver around the issue, the simple reality is that the information at issue belongs to Plaintiffs and no one else and certainly not to the Hospital Defendants.

III. UNDER SCTSA, A "TRADE SECRET" IS "INFORMATION" THAT DERIVES ECONOMIC VALUE FROM NOT BEING READILY ASCERTAINABLE BY THE PUBLIC, § 39-8-20(5).

The Hospital Defendants do not deny they are in possession of information belonging to someone else—the Plaintiffs. They have argued in court to keep what is not theirs and to have the ability to use it going forward. The law demands that the Hospital Defendants be required to return the information that belongs to Plaintiffs and not use it going forward. The Individual Defendants took information that belonged to Plaintiffs in breach of their duties of loyalty to Plaintiffs, and the Individual Defendants have provided this information to the Hospital Defendants, which seek to use it in competition with and to harm Plaintiffs. This puts this factual scenario on all fours with *Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650, at 1 (D.S.C. Mar. 29, 2012), where Judge Herlong ordered the new employer to return and not use the former employer's information. This court should do the same.

To be sure, the Plaintiffs have never sought to prevent the Individual Defendants from using "what is in their head." They certainly can use their know-how, but there is a critical difference between know-how in one's head and the detailed documents and information that an employer devotes significant resources to reduce to tangible form over a long period of time. Former employees cannot steal tangible documents and information from their former employer, provide it to their new employer, and use it compete with their former employer. That is what is going on here. During the motion hearing, the Hospital Defendants argued that the Individual

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Defendants could, independent of the information taken from Plaintiffs, write down all of the tangible information they misappropriated from the Plaintiffs. Whether they could or could not is not the point. They did not and have not. They took Plaintiffs' property and provided it to the Hospital Defendants. When one looks behind the Hospital Defendants' words and to their actions, one sees the truth. The truth is the Hospital Defendants are fighting vigorously in court to retain possession of Plaintiffs' documents and information. Indeed, such efforts by the Hospital Defendants reinforce the value that they themselves believe the information has. These actions speak loudly. They seek to do what the law clearly prohibits: to use information that does not belong to them for economic gain.

IV. THE SETTLEMENT AGREEMENTS WITH THE INDIVIDUAL DEFENDANTS.

Lastly, during oral argument, the Hospital Defendants insinuated that the settlement amount paid by the Individual Defendants was solely so they could be released from their non-compete obligations. The court should note that not all of the Individual Defendants had non-compete agreements with MUSC. Only three Individual Defendants did—Neskey, Horning, and Lentsch. *Complaint* ¶¶ *135-143*. There are a total of six Individual Defendants. Three had non-compete obligations (Neskey, Horning, and Lentsch), and three did not (Individual Defendants Day, Davis, and Sharma). All six Individual Defendants paid part of the settlement total of $1.7 Million to Plaintiffs. Such settlement required the Individual Defendants to return or destroy the very information the Hospital Defendants seek to keep – ironically, provided by the Individual Defendants to the Hospital Defendant.

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In conclusion, Plaintiffs repeat and reiterate their request for injunctive relief as reflected in their motion.

Respectfully submitted,

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Columbia, South Carolina
December 14, 2021

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, vs. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ANAND K. SHARMA, Defendants.	Case No. 2021-CP-10-05289 **PLAINTIFFS' MOTION TO ALTER OR AMEND THE ORDER DENYING PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, the Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") move to alter or amend the circuit court's order denying Plaintiffs' motion for temporary injunction.

Introduction

Plaintiffs moved for injunctive relief to enjoin the unlawful actions taken by Terry Day, Betsy Davis, Joshua Hornig, Eric Lentsch, David Neskey, and Anand Sharma (collectively "Individual Defendants") in concert with the Individual Defendants' new employer, Trident Medical Center, LLC and HCA Healthcare, Inc. (collectively "Hospital Defendants").

While employed by MUSC and while members of UMA, the Individual Defendants misappropriated valuable confidential and proprietary information belonging to Plaintiffs. The Individual Defendants misappropriated this information and disseminated it to the Hospital

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Defendants. The confidential and proprietary information which the Individual Defendants misappropriated from the Plaintiffs consist of the following:

1. Physician preference cards,

2. Instrument lists,

3. Financial information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC,

4. Financial information showing the salaries four of the Individual Defendants received while employed by MUSC,

5. Case logs for Defendant Day, and salaries for MUSC's residents and signed contracts for incoming fellows in the HNO Fellowship Program.

In this Memorandum, the property identified above shall be referred to as "Plaintiffs' Property." Prior to the hearing on Plaintiffs' motion for temporary injunction, the Individual Defendants agreed to settle with the Plaintiffs. The terms of the settlement required the Individual Defendants to pay the sum of $1.7 Million to the Plaintiffs and required the Individual Defendants to agree to the injunctive relief sought by the Plaintiffs.[1] In the settlement agreements, the Plaintiffs agreed to destroy the Plaintiffs' Property in their possession and to refrain from using the Plaintiffs' Property in the future. *See* Settlement Agreement, ¶ 2. Further, the Individual Defendants agreed to refrain from soliciting fellows in MUSC's fellowship program and to refrain from communicating with the fellowship program's accreditation body about MUSC's fellowship program. *See* Settlement Agreement, ¶ 3(a)-(b). Lastly, the Individual Defendants agreed to

[1] The settlement agreements between the Plaintiffs and Individual Defendants were submitted to the circuit court during the hearing on Plaintiffs' motion for temporary hearing. For ease of reference, the Plaintiffs are re-submitting these agreements to the circuit court as Exhibit 1 to this motion.

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refrain from soliciting any current MUSC employee or member of UMA to terminate their employment with MUSC or their membership with UMA. *See* Settlement Agreement, ¶ 3(c).

The Hospital Defendants have not entered into any similar agreement with Plaintiffs. Instead, the Hospital Defendants remain in possession of Plaintiffs' Property and have refused to return it. The only plausible reason the Hospital Defendants could have for refusing to return Plaintiffs' Property is that they intend to use it for their own economic gain in unlawful competition with MUSC. Further, the Hospital Defendants presumably intend to continue using this information to solicit and interfere with MUSC's fellowship program and in soliciting MUSC's employees and UMA's members.

The circuit court heard arguments on Plaintiffs' motion for temporary injunction on December 9, 2021. In support of their motion, Plaintiffs submitted four affidavits and thirty-four exhibits. On December 15, 2021, the circuit court issued a Form 4 Order, denying Plaintiffs' motion for temporary injunction.[2] Plaintiffs then filed this motion.

Analysis

I. The circuit court did not rule on whether Plaintiffs satisfied the second element necessary to obtain an injunction—likelihood of success on the merits of the litigation.

The circuit court's Form 4 order was silent as to whether Plaintiffs demonstrated a likelihood of success on the merits of the litigation. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004) (identifying the three elements the plaintiff must satisfy in seeking an injunction). Presumably, the circuit court was silent on whether Plaintiffs satisfied the likelihood of success on the merits element because the circuit court found Plaintiffs satisfied this element. However, in order to ensure this issue is preserved,

[2] The Parties received notice of the circuit court's decision on December 15, 2021 as well.

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Plaintiffs would respectfully request that the circuit court alter or amend its order to rule on whether Plaintiffs satisfied this element. *See Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (An issue must be raised to and ruled upon by the trial court to be preserved for appellate review); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (observing that a Rule 59(e) motion may be filed when "the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue"). Respectfully, Plaintiffs move for the circuit court to alter or amend its order to rule on whether Plaintiffs satisfied the likelihood of success on the merits element. Plaintiffs reassert the previous arguments made during the hearing and in its memorandum of law in support of this argument.

II. The circuit court did not rule on whether granting the injunction would preserve the status quo.

The circuit court's order was silent as to whether granting the injunction would preserve the status quo. As the court is well aware, the purpose of issuing an injunction is to preserve the status quo. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). Here, it is quite clear that the status quo would be preserved by granting the injunction.

Prior to the Individual Defendants misappropriating Plaintiffs' Property and disseminating it to the Hospital Defendants, the status quo was in accordance with the injunctive relief sought by Plaintiffs. *First*, Plaintiffs retained sole possession of Plaintiffs' Property, and the Hospital Defendants did not have this information. Therefore, if the circuit court were to grant the injunction, it would preserve the status quo by requiring the Defendants to return Plaintiffs' Property and keeping them from using it. *Second*, prior to the Individual Defendants and Hospital Defendants working together to interfere with and sabotage MUSC's fully-accredited head and neck fellowship program (which occurred while the Individual Defendants were employees of

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MUSC and members of UMA), the status quo was that MUSC had a fully accredited fellowship program, no fellows had been released of their commitments to MUSC, and MUSC had the ability to participate in the match cycle for the academic year 2023-2024. Again, the granting of the injunction would preserve the status quo as it would prevent the Hospital Defendants from interfering with MUSC's fellowship program and would prevent them from contacting the fellowship program's accreditation body. *Third*, prior to the Individual Defendants and Hospital Defendants working together to solicit MUSC's employees (which again occurred while the Individual Defendants were employees of MUSC and members of UMA), the status quo was that MUSC possessed one of the largest programs in the country devoted to the care of the head and neck cancer patient. The granting of the injunction would preserve the status quo as it would preserve MUSC's head and neck cancer team.

The facts clearly demonstrate that the court would preserve the status quo if it granted the injunctive relief. Plaintiffs would respectfully request that the circuit court alter or amend the order to rule on this issue.

III. The circuit court should alter or amend its order and find that Plaintiffs have demonstrated that they would suffer irreparable harm if the injunction were not entered.

Whether a wrong is irreparable in the sense that equity may intervene is not a question decided by narrow and artificial rules. *Peek v. Spartanburg Reg. Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005). "Irreparable injury as used in the law of injunction, does not necessarily mean that the injury is beyond the possibility of compensation in damages." *Bethel M.E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947).

A. Plaintiffs will suffer irreparable harm if an injunction is not entered requiring the Hospital Defendants to return Plaintiffs' Property and to refrain from using it in the future.

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The first type of injunctive relief Plaintiffs seek pertains to Plaintiffs' Property. Plaintiffs seek an injunction requiring the Hospital Defendants to return Plaintiffs' Property and preventing the Hospital Defendants from using it in the future. There are a litany of cases where South Carolina courts have found irreparable harm where a competitor is in possession of specific property belonging to another. *See Boone Ins. Agency, Inc. v. Lloyd*, No. 3:20-CV-02980-JMC, 2020 WL 5052956 (D.S.C. Aug. 27, 2020); *Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650 (D.S.C. Mar. 29, 2012); *Rockford Mfg., Ltd. v. Bennet*, 296 F.Supp.2d 681 (D.S.C. 2003); *Milliken & Co. v. Morin*, 399 S.C. 23, 37, 731 S.E.2d 288, 295 (2012); *Lewallen Automation, LLC v. Lewallen*, 2014 WL 7925812 (S.C. Comm. Pl. 2014). Respectfully, Plaintiffs are not aware of any case in South Carolina where a court has refused to enter an injunction under facts such as these—where a competitor acknowledges possession of property belonging to another and seeks to use that information to compete.

Courts view this particular circumstance—where a competitor has possession of information that belongs to another—as irreparable harm because of the unique damage caused by the possession and use of such information. *See Milliken*, 399 S.C. at 37, 731 S.E.2d at 295 ("[A]n employer may restrain a former employee from disclosing and using confidential information which was developed as a result of the employer's initiative and investment and which the employee learned as a result of the employee relationship."). Here, the Hospital Defendants have no right to Plaintiffs' Property.[3] By virtue of possessing and using Plaintiffs' Property, the Hospital Defendants are gaining an unfair competitive advantage on MUSC and others who play

[3] The Hospital Defendants have not presented any evidence to demonstrate that Plaintiffs' Property belongs to anyone other than Plaintiffs. The lone affidavit the Hospital Defendants submitted on this issue was the affidavit of Dr. Peter Horwich. Even if the court found Dr. Horwich's affidavit credible, his affidavit does nothing to establish that Plaintiffs' Property belongs to anyone other than Plaintiffs.

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by the rules. The evidence shows it would have taken the Hospital Defendants eight to ten years to independently cultivate the type of head and neck cancer practice that MUSC has developed. *Affidavit of Timothy Brendle* ¶ *7*. By possessing and using Plaintiffs' Property, the Hospital Defendants have been allowed to jump-the-line. The Hospital Defendants have not devoted the type of resources, time, energy, and effort MUSC and others have devoted to develop a head and neck cancer division. Instead, the Hospital Defendants have been allowed to steal it. This is bad public policy, and it is harm that cannot be repaired by monetary damages.

Even if Plaintiffs prevail at trial and are awarded damages, the fact remains that the Hospital Defendants have been allowed to jump-the-line. They have received the unfair competitive advantage of having unlawful access to Plaintiffs' Property. If courts refuse to enter injunctions under this particular set of facts, it could encourage competitors to receive misappropriated information, knowing that it may be more economically desirable to receive such information and pay damages later. Such a policy might prompt the competitor to accept misappropriated property, if it saves them time and money on research and development.

Also, when this court balances the equities, which is part of the irreparable harm and inadequate remedy at law analysis, the equities demonstrate an injunction should be issued to protect Plaintiffs' Property. *Poynter Invs.*, 387 S.C. at 587, 694 S.E.2d at 17 (observing that the balancing of the equities is part of the irreparable harm and inadequate remedy at law analysis). This analysis involves looking at the equities of each party and determining which side, if any, is more entitled to equitable relief. *Peek*, 367 S.C. at 455, 626 S.E.2d at 36-37. The Plaintiffs are more entitled to equitable relief than the Hospital Defendants as it relates to Plaintiffs' Property. Plaintiffs' Property belongs to Plaintiffs, not the Hospital Defendants. Equity dictates that an injunction should be issued to preserve and protect Plaintiffs' Property and to keep the Hospital

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Defendants from continued possession of Plaintiffs' Property and further use of it. The Hospital Defendants would suffer no harm (in either law or equity) if the injunction were entered as it relates to Plaintiffs' Property.

B. Plaintiffs will suffer irreparable harm if an injunction is not entered protecting MUSC's fellowship program.

Plaintiffs seek an injunction to preserve its fellowship program and prevent the Hospital Defendants from further interference with that program. The Hospital Defendants have set their sights on misappropriating MUSC's head and neck cancer team. The fellowship program is a vital part of the head and neck cancer team. If MUSC were to lose its accredited fellowship program, monetary damages could not replace it. It took MUSC approximately seven years to establish an accredited fellowship program. Through the accredited fellowship program, MUSC has been able to attain funding for research opportunities, and MUSC has been able to attract high-quality faculty members. The fellowship program has allowed MUSC to provide not only excellent patient care, but also to train the next generation of head and neck cancer clinicians. If MUSC lost its fellowship program, it would be analogous to the loss of a business. There is no certainty that MUSC could rebuild its fellowship program. Court have issued injunctions to prevent the loss of a business and to protect business goodwill, *Id.* at 455 n.2, 626 S.E.2d at 37 n.2, and in this instance, this court should issue an injunction to protect MUSC's fellowship program from further interference by the Hospital Defendants.

In addition, if an injunction is not entered to restrain the Hospital Defendants' from unlawfully interfering with MUSC's fellowship program, the Hospital Defendants would be allowed to jump-the-line. Again, it has taken MUSC extensive amount of time, energy, effort, and resources to build its fellowship program. Similarly, it has taken other healthcare systems similar amounts of time, energy, effort, and resources to build similar programs. If an injunction is not

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entered to prevent the Hospital Defendants' further interference with MUSC's fellowship program, it would have the effect of allowing the Hospital Defendants to jump-the-line and simply steal the fellowship program that MUSC has created. Even if MUSC received all of the monetary damages it asked for at trial, there would still be irreparable harm if an injunction is not entered. The irreparable harm would consist of the unfair advantage the Hospital Defendants have obtained in using inside employees (the Individual Defendants) and using Plaintiffs' Property to interfere with MUSC's fellowship program.

Lastly, when the equities are balanced, the Hospital Defendants have no right to interfere with MUSC's fellowship program through the use of inside employees and with Plaintiffs' Property. Equity dictates that an injunction should be entered to protect MUSC's fellowship program because MUSC has built its fellowship program through lawful means and by investing time, energy, and effort to the construction of this program. By contrast, the Hospital Defendants seek to destroy MUSC's fellowship program and construct its own fellowship program by unlawful means. Therefore, on balance, the equities favor granting the injunction.

C. Plaintiffs will suffer irreparable harm if the Hospital Defendants are not enjoined from soliciting members of MUSC's head and neck cancer team.

The Hospital Defendants have been soliciting MUSC's head and neck cancer team in two unlawful ways. First, the solicitation has relied on inside employees—the Individual Defendants—actively soliciting members of the head and neck cancer team to resign from their employment with MUSC and accept employment with the Hospital Defendants. Second, the solicitation has occurred while the Hospital Defendants are in possession of Plaintiffs' Property. If this unlawful solicitation continues, MUSC could experience further losses to its head and neck cancer team. If MUSC were to lose its head and neck cancer team, it would be the equivalent of a loss of a business, *Id.* at 455 n.2, 626 S.E.2d at 37 n.2, and this court should issue an injunction

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to protect MUSC's head and neck cancer team. Also, this type of loss would be extremely difficult to quantify and therefore would be irreparable. MUSC built the head and neck cancer team over the course of two decades. MUSC receives a great benefit from its prestigious and highly regarded head and neck cancer team. It is integral in the success and good reputation MUSC enjoys, and if the head and neck cancer team were lost, the damage caused would be difficult (if not impossible) to ascertain.

Even if the Plaintiffs could somehow obtain complete monetary relief from the Hospital Defendants for the loss of its head and neck cancer team, the irreparable harm comes in the form of the benefit received by the Hospital Defendants in being allowing to jump-the-line and unfairly compete against MUSC as it relates to its head and neck cancer team. The Hospital Defendants should have to play by the rules and build their head and neck cancer team in the same lawful ways as MUSC and others have. If the Hospital Defendants are not required to play by the rules, MUSC will suffer irreparable harm.

Lastly, when the equities are balanced, the Hospital Defendants have no right to interfere with MUSC's head and neck cancer through the use of inside employees and with Plaintiffs' Property. Equity dictates that an injunction should be entered to protect MUSC's head and neck cancer team because MUSC has built this team through lawful means and by investing time, energy, and effort. By contrast, the Hospital Defendants seek to destroy MUSC's head and neck cancer team and construct its own competing team by unlawful means. Therefore, on balance, the equities favor granting the injunction.

IV. The circuit court should alter or amend its order and find that Plaintiffs have demonstrated that they do not have an adequate remedy at law if an injunction is not entered.

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The inquiries of whether a party suffers irreparable harm and whether it maintains an adequate remedy at law call for a similar analysis. *See MercExchange, L.L.C. v. eBay, Inc.*, 500 F.Supp.2d 556, 569 n. 11 (E.D. Va. 2007) ("The irreparable harm inquiry and remedy at law inquiry are essentially two sides of the same coin ...."). As set forth above, monetary damages alone will not provide adequate relief to the Plaintiffs in this case. *See MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 370, 588 S.E.2d 635, 639 (Ct. App. 2003) (An injunction is available when monetary damages will fail to make the party whole.). Even with monetary relief, if an injunction is not entered, the Hospital Defendants would be allowed to engage in unlawful competition and to jump-the-line of those playing by the rules and engaging in legal competition. The result would be to allow the Hospital Defendants to compete against MUSC's head and neck cancer division in the Charleston area without requiring the Hospital Defendants to devote the same resources that MUSC (and the people of the State) had to devote to develop its head and neck cancer division. It would allow the Hospital Defendants to fast-track their competitive efforts and to compete against MUSC's head and neck cancer team without committing the resources necessary to do so. Equity should not allow that to happen. Monetary damages would not (and could not) make Plaintiffs whole for the damage they would suffer if an injunction is not entered to put an immediate halt to the Hospital Defendants' unlawful conduct.

V. The circuit court's order does not comply with Rule 52(a) of the South Carolina Rules of Civil Procedure.

Rule 52(a) requires the circuit court, in granting or refusing an injunction, to set forth findings of fact and conclusions of law in support of its decision. Rule 52(a), SCRCP. While circuit courts are not required to set forth findings on all the myriad factual questions arising in a particular case, circuit courts must make factual findings that allow the appellate court to ensure the law is faithfully executed. *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568

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S.E.2d 338, 343 (2002). The absence of factual findings makes the appellate task of reviewing a circuit court order impossible because the reasons underlying the decision are left to speculation. *Id.*

Here, the circuit court issued a Form 4 Order denying Plaintiffs' motion for temporary injunction. The Form 4 Order sets forth no factual findings in support of the decision to deny Plaintiffs' motion for temporary injunction. Because there are no factual findings to support the circuit court's order, the order does not comply with Rule 52(a). *See* Rule 52(a), SCRCP (requiring the circuit court to set forth findings of fact and conclusions of law in granting or denying a motion for injunctive relief). Respectfully, Plaintiffs move for the circuit court to alter or amend its order to comply with Rule 52(a) as contemplated by Rule 52(b). *See* Rule 52(b), SCRCP (allowing the circuit court to amend its findings or make additional findings upon a timely Rule 52 motion). In doing so, Plaintiffs move for the court to reassess its previous conclusion. As set forth below, the factual evidence before the court demonstrates that the Plaintiffs have made the required showing for injunctive relief, and Plaintiffs move for the circuit court to issue an injunction to this effect.

CONCLUSION

Plaintiffs respectfully move and request this Court to enter the following injunction:

1. Prohibit the Hospital Defendants from using Plaintiffs' confidential and proprietary information,

2. Require the Hospital Defendants to return Plaintiffs' confidential and proprietary information,

3. Prohibit the Hospital Defendants from billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information,

4. Prohibit the Hospital Defendants from interfering with MUSC's fellowship program in any way or recruiting any MUSC fellow, and

5. Prohibit the Hospital Defendants from contacting any fellowship accreditation bodies regarding MUSC's fellowship program; and

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6. Prohibit the Hospital Defendants from soliciting any of MUSC's employees supporting the HNO Division.

In addition to the foregoing, the Plaintiffs pray for such other and further relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,

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Columbia, South Carolina
December 28, 2021

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, vs. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ANAND K. SHARMA, Defendants.	Case No. 2021-CP-10-05289 **PLAINTIFFS' MOTION TO SUPERSEDE PRIOR ORDERS DENYING PLAINTIFFS INJUNCTIVE RELIEF AND TO GRANT A TEMPORARY INJUNCTION DURING PENDENCY OF APPEAL**

Pursuant to Rule 62(c) of the South Carolina Rules of Civil Procedure and Rule 241(c) of the South Carolina Appellate Court Rules, the Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") move for the circuit court to issue an order: (1) superseding the circuit court's orders denying Plaintiffs' motion for temporary injunction and denying Plaintiffs' motion to alter or amend the order denying Plaintiffs' motion for temporary injunction, and (2) imposing a temporary injunction during the pendency of Plaintiffs' appeal of the aforementioned orders requiring Trident Medical Center, LLC ("Trident") and HCA Healthcare, Inc. ("HCA") (collectively "Hospital Defendants") to return Plaintiffs' Property (defined below).

Introduction

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Without the requested relief, Hospital Defendants will be allowed to continue upsetting the status quo by possessing, using, and benefitting from misappropriated confidential and proprietary materials belonging to Plaintiffs. The misappropriated materials consist of the following:

1. Physician preference cards,

2. Instrument lists,

3. Financial information showing the amount of revenue generated by four of the Individual Defendants during their employment with MUSC,

4. Financial information showing the salaries four of the Individual Defendants received while employed by MUSC,

5. Case logs for Defendant Day, and salaries for MUSC's residents and signed contracts for incoming fellows in the Head and Neck Oncology ("HNO") Fellowship Program.

The materials identified above shall be referred to as "Plaintiffs' Property."

Hospital Defendants came into possession of Plaintiffs' Property as a result of and in concert with the unlawful actions taken by Terry Day, Betsy Davis, Joshua Hornig, Eric Lentsch, David Neskey, and Anand Sharma (collectively "Individual Defendants"), each of whom have separately settled with Plaintiffs and agreed to destroy and refrain from using Plaintiffs' Property. But, while never disputing that the property in question belongs to Plaintiffs, Hospital Defendants have refused to return and refrain from using Plaintiffs' Property, creating an unfair competitive advantage during the pendency of the appeal and at a crucial time in Hospital Defendants' development of their new HNO program.

Plaintiffs' filed a notice of appeal, appealing the circuit court's orders denying Plaintiffs' motions for temporary injunction and to alter or amend the order denying Plaintiffs' motion for temporary injunction. But in order to prevent irreparable harm and a miscarriage of justice,

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Plaintiffs request that this Court grant a temporary injunction during the pendency of the appeal, requiring Hospital Defendants to return Plaintiffs' Property.

Factual/Procedural Background

The Individual Defendants were long-term faculty members and medical care providers at MUSC. Together, the Individual Defendants were part of a team of healthcare professionals who treated patients suffering from head and neck cancer at MUSC.

While still employed by MUSC and while still members of UMA, the Individual Defendants coordinated with each other and their new employer, Trident (which is owned by HCA), for almost a year to effect a wholesale departure of MUSC's head and neck cancer team to Trident effective December 1, 2021. *Affidavit of Dr. Cawley* ¶ 38 (Attachment 2). As part of the wholesale departure, the Individual Defendants misappropriated Plaintiffs' Property and disseminated it to the Hospital Defendants. *Affidavit of Dr. Cawley* ¶¶ 16-37 (Attachment 2); *Affidavit of Dean DuBois* ¶¶ 18-39 (Attachment 3); *Affidavit of Mr. Brendle* ¶¶ 5-6 (Attachment 12); *Plaintiffs' Master Exhibits* #6-#7 (Attachments 6 & 7). Prior to the unlawful actions of the Individual Defendants, Hospital Defendants never had unfettered rights to Plaintiffs' Property, and Hospital Defendants have never had any right to access Plaintiffs' Property.

In order to prevent irreparable harm and preserve the *status quo ante*, Plaintiffs submitted a motion for temporary injunction on November 22, 2021. In the motion, Plaintiffs requested that the Court issue an order requiring the Individual and Hospital Defendants to return and refrain from using Plaintiffs' Property.[1]

[1] Plaintiffs also moved for injunctive relief prohibiting the Individual and Hospital Defendants from interfering in MUSC's Fellowship Program (including its accreditation), recruiting or soliciting Plaintiffs' employees, and billing or collecting for any services performed utilizing any of Plaintiffs' Property. While Plaintiffs are appealing the Court's denial of injunctive relief on

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Prior to the hearing on Plaintiffs' motion for temporary injunction, the Individual Defendants agreed to settle with the Plaintiffs. In the settlement agreements, the Individual Defendants each agreed to destroy the Plaintiffs' Property in their possession and to refrain from using the Plaintiffs' Property in the future. *See Exhibit #1 to Motion to Alter or Amend - Settlement Agreement*, ¶ 2 (Attachment 4).[2]

Hospital Defendants have not entered into any similar agreement with Plaintiffs. Instead, Hospital Defendants remain in possession of Plaintiffs' Property and have refused to return it. Hospital Defendants have admittedly invested significant sums of money in preparing to provide HNO services at Trident, *see Trident Med. Ctr.'s Memo. Of Law in Opp. To the Motion for Temp. Inj.* p. 18, likely on the expectation they could use Plaintiffs' Property to greatly improve and expedite the process. The only plausible reason Hospital Defendants could have for refusing to return Plaintiffs' Property is that they intend to use it for their own economic gain in unlawful competition with Plaintiffs, and they believe it would jeopardize or delay the return in their investment to take the time to develop these materials from scratch.

The Court heard arguments on Plaintiffs' motion for temporary injunction to enjoin Hospital Defendants from continuing to possess and use Plaintiffs' Property on December 9, 2021. In support of their motion, Plaintiffs submitted four affidavits and thirty-four exhibits. On December 15, 2021, the Court issued a Form 4 Order, denying Plaintiffs' motion for temporary injunction. Plaintiffs then filed a motion to alter or amend the order pursuant to Rule 59(e) on December 28, 2021. On February 18, 2022, the Court issued a Form 4 Order, denying Plaintiffs'

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these issues, the current motion for temporary injunction during the pendency of the appeal is limited to protecting Plaintiffs' Property.

[2] The substantive provisions of the Individual Defendants' Settlement Agreements are the same, therefore Plaintiffs are attaching just one to this Motion in order to avoid unnecessary duplication.

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motion to alter or amend. On March 21, 2022, Plaintiffs filed a notice of appeal to appeal the circuit court's orders denying Plaintiffs' injunctive relief.

Legal Standard

Under Rule 62(c), SCRCP, "when an appeal is taken from an interlocutory or final judgment ... denying an injunction, the court in its discretion may ... grant an injunction during the pendency of the appeal ...." Under Rule 62(g), SCRCP, an application for such relief should be made first to the trial court, if practicable. In addition to seeking relief under Rule 62, SCRCP, upon serving notice of appeal, "any party may move for an order imposing a supersedeas of matters decided in the order" under appeal. Rule 241(c), SCACR; *see, e.g., Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res. & Comty. Serv. Assoc., Inc.,* 345 S.C. 594, 598 (2001) (referencing a circumstance where the appellate court properly issued an injunction via Writ of Supersedeas after the trial court denied appellant's motion for a temporary injunction). Similar to Rule 62(g), SCRCP, an application for supersedeas should first be made to the lower court which entered the order, except in extraordinary circumstances. Rule 241(d)(1), SCACR.

The purpose of issuing an injunction pending appeal is "to preserve the status quo pending the determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Svcs. Info. Tech. Mgmt. Office*, No. 98-CP-40-3945, 2000 WL 35456881, at *9 (S.C. Comm. Pl. 2000) (citing *Graham v. Graham*, 301 S.C. 128, 390 S.E.2d 468 (Ct. App. 1990)). Courts consider the following when determining whether to grant an injunction during the pendency of appeal: (1) the potential for irreparable harm to the appellant if the injunction is not granted, (2) the likelihood of success on the merits, (3) the prejudice (if any) that could be sustained by the respondent if the injunction is granted, and (4) the public interest. *Unisys*, 2000 WL 35456881, at *9.

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Analysis

I. Hospital Defendants are in wrongful possession of Plaintiffs' Property and have no basis in law or equity to retain or use it.

The most exigent issue in this case is that Hospital Defendants, a competitor of Plaintiffs, are in possession of valuable confidential and proprietary materials belonging to Plaintiffs. Hospital Defendants have never argued that they are not in fact in possession of Plaintiffs' Property or that the property belongs to Hospital Defendants. Instead, Hospital Defendants have attempted to misdirect and confuse the Court about why their possession of Plaintiffs' Property is not a problem.

For example, Hospital Defendants have made much of the fact that some of Plaintiffs' Property (specifically, the physician preference cards and instrument lists) was developed by the Individual Defendants "based on their know-how." *Trident Med. Ctr.'s Memo. Of Law in Opp. To the Motion for Temp. Inj.* p. 10; *Hearing Transcript* p. 42 (Attachment 1). What Hospital Defendants ignore is that these tangible materials were developed while the Individual Defendants were employees of MUSC and within the scope of their employment. South Carolina courts consistently find that materials developed by an employee (even using his or her know-how) within the scope of employment belong to the employer. *See, e.g., Milliken & Co. v. Morin*, 399 S.C. 23, 35, 731 S.E.2d 288, 294 (2012) ("An employer therefore has a legitimate interest in protecting inventions that are the fruits of its employees' efforts while working for the company. Indeed, such provisions are simply a recognition of the fact of business life that employees sometimes carry with them to new employers inventions or ideas so related to work done for a former employer that in equity and good conscience the fruits of that work should belong to the former employer.") (internal citations and quotations omitted).

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Hospital Defendants have also asserted they were not on notice that Plaintiffs' Property received from the Individual Defendants was confidential and proprietary because it was not specifically marked as such. *Trident Med. Ctr.'s Memo. Of Law in Opp. To the Motion for Temp. Inj.* p. 11; *Hearing Transcript* p. 44 (Attachment 1). What Hospital Defendants ignore is that the law does not require confidential and proprietary property to be marked as such. *See* S.C. Code § 39–8–20(5)(a) (in order for a document or piece of information to have trade secret protection under the South Carolina Trade Secrets Act ("SCTSA"), a party is only required to engage in reasonable efforts to maintain the secrecy of the documents or information). Moreover, Hospital Defendants gloss over the fact that upon being informed that the materials are confidential and proprietary, Hospital Defendants still refuse to return and refrain from using Plaintiffs' Property.

Hospital Defendants have also boldly claimed that when they received Plaintiffs' Property from Individual Defendants while they were still Plaintiffs' employees, Hospital Defendants were unaware that Plaintiffs' Property had been misappropriated from Plaintiffs without authorization. *Trident Med. Ctr.'s Memo. Of Law in Opp. To the Motion for Temp. Inj.* pp. 11-12; *Hearing Transcript* p. 44 (Attachment 1). Even if this absurd assertion were true, Hospital Defendants have since been put on notice that Plaintiffs did not authorize the Individual Defendants to misappropriate Plaintiffs' Property and yet Hospital Defendants have continued to refuse to return and refrain from using Plaintiffs' Property.

Hospital Defendants have provided no legal or equitable arguments in support of their right to possess or use Plaintiffs Property. Instead, Hospital Defendants argued that Plaintiffs are circuitously attempting to prevent the Individual Defendants from using their expertise to perform surgeries as employees of Hospital Defendants. *Hearing Transcript*, p. 47 (Attachment 1). To be clear, Plaintiffs are requesting that Hospital Defendants return and refrain from using Plaintiffs'

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Property that was misappropriated by the Individual Defendants, which is exactly what the Individual Defendants already agreed to in their settlement agreements. Plaintiffs are not attempting to prevent the Individual Defendants and Hospital Defendants from independently recreating the same materials, which Plaintiffs have several times acknowledged. *See, e.g.*, *Hearing Transcript* p. 48 (Attachment 1) ("[W]hat they know between their head, in their head, they can use. They can't use our proprietary information."); *see also*, *Plaintiff's Reply Memo. Of Law* p. 3 ("To be sure, the Plaintiffs have never sought to prevent the Individual Defendants from using 'what is in their head.'"). But as Hospital Defendants have consistently and repeatedly shown, they are either unable or unwilling to engage in fair competition by investing the time and effort to work with their new employees to independently recreate the same materials. Instead, they simply took Plaintiffs' Property despite having no right to possess or use it.

II. A temporary injunction during the pendency of the appeal is necessary to preserve the status quo and to preserve to Plaintiffs the fruits of a meritorious appeal that might otherwise be lost.

"The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36-37 (Ct. App. 2005); *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.,* 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010) ("A preliminary injunction should issue only if necessary to preserve the status quo ante ...."); *County of Richland v. Simpkins*, 348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002) ("[T]he inherent purpose behind the equitable remedy of an injunction [is] to preserve the status quo.").

Here, the status quo is unmistakable: Plaintiffs are the rightful and sole owners of their confidential and proprietary materials, and the Hospital Defendants have no right to Plaintiffs' Property. Hospital Defendants never had access to, possession of, or any claim of right to Plaintiffs' Property prior to the unlawful misappropriation by the Individual Defendants that

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precipitated the current lawsuit. Thus, allowing Hospital Defendants to retain and use Plaintiffs' Property during the pendency of the appeal upsets the *status quo ante*. And because Hospital Defendants gain an unfair competitive advantage every day they are allowed to use Plaintiffs' Property to expedite their development of an HNO surgical program, preserving what remains of the *status quo ante* can only be achieved by immediately enjoining Hospital Defendants from retaining and using Plaintiffs' Property. To do otherwise will materially impair the benefit to Plaintiffs if they are ultimately successful on their appeal.

III. Plaintiffs meet the required elements for granting a temporary injunction during the pendency of the appeal of the orders denying Plaintiffs' motion for injunction.

Courts consider the following when determining whether to grant an injunction during the pendency of appeal: (1) the potential for irreparable harm to the appellant if the injunction is not granted, (2) the likelihood of success on the merits, (3) the prejudice (if any) that could be sustained by the respondent if the injunction is granted, and (4) the public interest. *Unisys*, 2000 WL 35456881, at *9. Plaintiffs succeed on each of these considerations with regard to Plaintiffs' Property.

First, the potential for irreparable harm to Plaintiffs if the injunction is not granted is supported by a litany of cases where South Carolina courts have found irreparable harm when a competitor is in possession of specific property belonging to another. *See Boone Ins. Agency, Inc. v. Lloyd*, No. 3:20-CV-02980-JMC, 2020 WL 5052956 (D.S.C. Aug. 27, 2020); *Indus. Packaging Supplies, Inc. v. Martin*, No. CA 6:12-713-HMH, 2012 WL 1067650 (D.S.C. Mar. 29, 2012); *Rockford Mfg., Ltd. v. Bennet*, 296 F.Supp.2d 681 (D.S.C. 2003); *Milliken*, 399 S.C. at 37, 731 S.E.2d at 295; *Lewallen Automation, LLC v. Lewallen*, 2014 WL 7925812 (S.C. Comm. Pl. 2014). Courts have consistently shown disdain for this type of conduct and routinely issue injunctions to protect the former employer's confidential and proprietary information from exploitation by a new

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employer. *See, e.g., Indus. Packaging Supplies,* 2012 WL 1067650, at *7 (enjoining both the former employee and the new employer from using and/or selling any products based on former employer's trade secrets and confidential information, and ordering the return of the information to the former employer).

Second, Plaintiffs' have made a prima facie showing of success on the merits. The Court need examine the merits of the plaintiff's underlying claims "only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Compton*, 392 S.C. at 367, 709 S.E.2d at 642; *see Peek*, 367 S.C. at 456, 626 S.E.2d at 37 ("The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made."). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate [determination] of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1991). "Prima facie evidence is evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted." *LaCount v. Gen. Asbestos & Rubber Co.*, 184 S.C. 232, 192 S.E. 262, 266 (1937).

Plaintiffs have made a prima facie showing of success on the merits under the South Carolina Trade Secrets Act ("SCTSA"). Under the SCTSA, information may be a trade secret only if it "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code § 39–8–20(5)(a). "In order to decide whether something is a trade secret, one must consider the extent to which the information is

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known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others." *Wilson v. Gandis*, 430 S.C. 282, 315, 844 S.E.2d 631, 649 (2020). Plaintiffs satisfied the elements for a prima facie case for violation of the SCTSA through the affidavits submitted by Dr. Patrick Cawley (CEO of MUSC Health) and Dr. Raymond DuBois (Dean of the College of Medicine at MUSC), as well evidence demonstrating Plaintiffs' policies related to protecting its confidential and proprietary information and of Individual Defendants' efforts to transmit Plaintiffs' Property to Hospital Defendants. *Affidavit of Dr. Cawley* ¶¶ 20-23, 25, 28, 30-37 (Attachment 2), and 55; *Affidavit of Dean DuBois* ¶¶ 22-25, 27, 30, 33-39, and 56 (Attachment 3); *Plaintiffs' Master Exhibits* #5 (Attachment 5) , #7 (Attachment 7), #9-#10 (Attachments 8 & 9), #14-#15 (Attachments 10 & 11).

Plaintiffs have also made a prima facie showing that Individual Defendants breached their duty of loyalty, for which Hospital Defendants as the new employers of Individual Defendants are jointly and severally liable. To establish a claim for breach of duty of loyalty, a plaintiff must show the existence of a duty of loyalty, a breach of that duty by the defendant, and damages proximately resulting from the wrongful conduct of the defendant. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.,* 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012). An employee owes a duty of loyalty to his employer to remain faithful to the employer's interests throughout the term of employment, to abide by his employer's instructions and policies, and to carry out those instructions and policies. *Nucor Corp. v. Bell*, 482 F.Supp.2d 714, 727 n.9 (D.S.C. 2007); *Foreign Academic & Cultural Exch. Servs., Inc. v. Tripon*, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011); *Young v. McKelvey*, 286 S.C. 119, 122, 333 S.E.2d 566, 567 (1985); *Berry v. Goodyear Tire and Rubber Co.*, 270 S.C. 489, 491, 242 S.E.2d 551 (1978); *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972).

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Here, the Individual Defendants breached their duties of loyalty to Plaintiffs. While employed by MUSC and while members of UMA, they took actions to take valuable information that belongs to Plaintiffs, and they provided it to the Hospital Defendants. Under these facts, Plaintiffs have satisfied the elements for a prima facie case for breach of the duty of loyalty against the Individual Defendants. In *Lowndes*, the Supreme Court held that when a new employer obtains confidential and proprietary information from a new employee belonging to the former employer or uses information or gains an advantage deriving from the employee's breach of duties of loyalty to his former employer, the new employer was "jointly and severally" liable with the employee for any profits it received from the employee's wrongful conduct as it relates to his former employer. *Lowndes*, 259 S.C. at 337-38, 191 S.E.2d at 769-70. Based on the evidence described above in support of Plaintiffs' SCTSA claim (demonstrating that Hospital Defendants obtained Plaintiffs' Property from Individual Defendants), Plaintiffs have also made a prima facie showing of success on the merits with regard to the joint and several liability of Hospital Defendants for the Individual Defendants breach of their duties of loyalty.

Third, Hospital Defendants will not sustain prejudice as a result of being enjoined from continuing to retain and use Plaintiffs' Property during the pendency of the appeal. Two federal district courts in South Carolina have found that the defendants will suffer no harm at all when an injunction is issued protecting the confidential and proprietary information of the former employer, because all the injunction does is prevent the defendants from using information that does not belong to them in the first place. *Rockford Mfg.*, 296 F.Supp.2d at 685; *Boone*, 2020 WL 5052956, at *6.

In contrast, Plaintiffs would suffer significant prejudice if Hospital Defendants are allowed to retain and use Plaintiffs' Property during the pendency of the appeal. Plaintiffs will have no

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adequate remedy at law to redress Hospital Defendants' use of Plaintiffs' Property at this crucial stage of developing their competing HNO program. Courts have recognized that the loss of a trade secret is "difficult to measure in monetary damages because '[a] trade secret lost is, of course, lost forever.'" *Nucor Corp. v. Bell*, No. 2:06-CV-02972-DCN, 2008 WL 9894350, at *20 (D.S.C. Mar. 14, 2008) (unreported) (citing *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 62 (2d Cir.1984)). Money alone cannot replace the loss of Plaintiffs' confidential and proprietary information. And if the Hospital Defendants are allowed to use Plaintiffs' confidential and proprietary information in these early, crucial stages of developing their HNO program, there is no way to make Plaintiffs whole for the damage they would sustain. The only way to protect Plaintiffs' Property during the pendency of the appeal is to enjoin the Hospital Defendants from possessing and using it.

Fourth, the public interest favors issuing an injunction during the pendency of the appeal. Even if Plaintiffs prevail at trial and are awarded damages, the fact remains that the Hospital Defendants have been allowed to jump-the-line. They have received the unfair competitive advantage of having unlawful access to Plaintiffs' Property. If courts refuse to enter injunctions under this particular set of facts, it could encourage competitors to receive misappropriated information, knowing that it may be more economically desirable to receive such information and pay damages later. Such a policy might prompt competitors to accept misappropriated property, if it saves them time and money on research and development. But issuing an injunction during the pendency of the appeal acknowledges that the value of an employer's confidential and proprietary materials lies in its secrecy and exclusive use in the marketplace, and demonstrates that marketplace competitors cannot gain competitive advantage from misappropriated property while running out the clock on the litigation process.

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Conclusion

Using its authority under Rule 62(c), SCRCP, and Rule 241(c), SCACR, the Court should issue a temporary injunction prohibiting Hospital Defendants from retaining and using Plaintiffs' Property while the appeal is pending.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS MEDICAL UNIVERSITY OF SOUTH CAROLINA and the UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA

Columbia, South Carolina
March 24, 2022

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA AND UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, vs. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, AND ANAND K. SHARMA, Defendants.	Case No. 2021-CP-10-05289 **VERIFICATION OF PLAINTIFFS**

Annette R. Drachman, General Counsel for the Medical University of South Carolina, and Andrea H. Brisbin, General Counsel for the University Medical Associates of the Medical University of South Carolina, who being duly sworn, do depose and state that they have reviewed Plaintiffs' Motion styled, "Plaintiffs' Motion to Supersede Prior Orders Denying Plaintiffs Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal" and that the matters set forth therein are true to the best of their knowledge. They specifically submit the verification in support of the factual assertions in the motion.

[signatures on following page]

Annette R. Drachman, General Counsel for the Medical University of South Carolina

SWORN to and subscribed before
Me this 25th day of March, 2022.

Deann B. Beebe

NOTARY PUBLIC

My Commission Expires: Jan 10, 2027

Andrea H. Brisbin, General Counsel for the University Medical Associates of the Medical University of South Carolina

SWORN to and subscribed before
Me this 25th day of March, 2022.

Deann B. Beebe

NOTARY PUBLIC

My Commission Expires: Jan 10, 2027

Deann B. Beebe
Notary Public, State of South Carolina
My Commission Expires January 10, 2027

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC.; TRIDENT MEDICAL CENTER, LLC; TERRY A. DAY; BETSY KAY DAVIS; JOSHUA D. HORNIG; ERIC J. LENTSCH; DAVID M. NESKEY; and ANAND K. SHARMA, Defendants.	Civil Action No. 2021-CP-10-05289 **TRIDENT MEDICAL CENTER, LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION TO SUPERSEDE PRIOR ORDERS DENYING PLAINTIFFS INJUNCTIVE RELIEF AND TO GRANT A TEMPORARY INJUNCTION DURING PENDENCY OF APPEAL**

Defendant Trident Medical Center, LLC ("Trident") submits this Memorandum of Law in Opposition to the Plaintiffs' Motion to Supersede Prior Orders Denying Plaintiffs Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal. Plaintiffs' Motion should be denied for the reasons set forth below, as well as for the reasons previously presented in Trident's Memorandum of Law in Opposition to the Motion for Temporary Injunction, filed December 9, 2021 [**Exhibit A** attached hereto], and Trident's Memorandum of Law in Opposition to Plaintiffs' Motion to Alter or Amend the Court's Order denying Plaintiffs' Motion for Temporary Injunction, filed January 10, 2022 [**Exhibit B** attached hereto], and incorporated by reference herein.

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FACTUAL AND PROCEDURAL HISTORY

1. On November 22, 2021, Plaintiffs filed a Complaint against HCA Healthcare, Inc. ("HCA")[1], Trident, and six individual physicians[2] who were, at the time, employed by UMA.

2. The same day that Plaintiffs filed their Complaint, Plaintiffs filed a Motion for Temporary Injunction. The relief sought by Plaintiffs was an injunction that:

   a. Prohibits Defendants from further utilizing Plaintiffs' allegedly confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data;

   b. Requires the return of all allegedly confidential and proprietary information taken, including, but not limited to instrument lists, patient lists, physician preference cards, and financial data;

   c. Prohibits Defendants from billing or collecting money for services performed utilizing any of Plaintiffs' allegedly confidential and proprietary information, including instrument lists, patient lists, physician preference cards, and financial data;

   d. Prohibits Defendants from further interfering with MUSC's Fellowship Program in any way, or recruiting any MUSC Fellow;

   e. Prohibits Defendants from contacting any Fellowship accreditation bodies regarding MUSC; and

   f. Prohibits Defendants from further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA.

3. On December 9, 2021, the Court (Judge McCoy) held a hearing on the Plaintiffs' Motion for Temporary Injunction.

4. Six (6) days later, on December 15, 2021, the Court issued an order denying Plaintiffs' Motion for Temporary Injunction. The Court's order denied Plaintiffs' Motion on the

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[1] As discussed more fully in the Rule 12(b)(2) Motion to Dismiss filed by HCA, Plaintiffs have not met their burden of establishing that the Court has personal jurisdiction over HCA, and given that, the Court cannot order injunctive relief against HCA.

[2] After filing the above-captioned lawsuit, Plaintiffs settled their claims with the Individual Defendant Physicians.

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grounds that Plaintiffs failed to demonstrate that irreparable harm would occur if the temporary injunction is not granted and Plaintiffs failed to sufficiently demonstrate that they do not have an adequate remedy at law for their purported claims.

5. On December 28, 2021—the last possible day—Plaintiffs filed a Motion to Alter or Amend the Court's order denying their Motion for Temporary Injunction.

6. On February 18, 2022, the Court denied Plaintiffs' Motion to Alter or Amend.

7. On March 11, 2022, the Court granted Plaintiffs' request for protection for Plaintiffs' counsel "and her clients from the scheduling of hearings or trial" between March 24, 2022, and April 15, 2022, because "Counsel has long standing vacation out of the country and has purchased airline tickets and hotel accommodations."

8. Thirty (30) days after the Court issued the Order denying the Motion to Alter or Amend, on March 21, 2022—the last possible day—Plaintiffs filed a Notice of Appeal of the Court's two prior orders denying Plaintiffs' request for injunctive relief.

9. On March 25, 2022, one hundred twenty-three (123) days after their initial Motion for Temporary Injunction was filed, 100 days after it was denied, and 35 days after denial of their Motion to Alter or Amend, Plaintiffs filed the current Motion to Supersede Prior Orders Denying Plaintiffs Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal. This motion seeks, for a third time, an order imposing the essentially same injunctive relief to which the Court has twice previously found Plaintiffs were not entitled. Plaintiffs now seek an injunction "requiring Hospital Defendants to return Plaintiffs' Property" and to "[prohibit] Hospital Defendants from retaining and using Plaintiffs' Property . . . ." Plaintiffs cite no change in circumstances or governing law in support of the Motion.

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STANDARD OF REVIEW

A court should not grant a motion for an injunction (in accordance with Rule 62(c)) except as an extraordinary and drastic measure to preserve the status quo of the parties at the time the appeal is filed. *See Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 1987042, at *2 (N.D. Cal. June 4, 2012) (declining to grant a motion for a Rule 62 injunction because granting the motion would alter "the respective rights of the parties and chang[e] the status quo that existed at the time of the appeal")[3]; *George Sink PA Inj. Laws. v. George Sink II L. Firm LLC*, No. 2:19-CV-01206-DCN, 2019 WL 6318778, at *7 (D.S.C. Nov. 26, 2019); *Alcala v. Hernandez*, No. 4:14-CV-04176-RBH, 2015 WL 7312891, at *7 (D.S.C. Nov. 19, 2015); *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

Even in a case where a Rule 62(c) request for injunctive relief pending appeal might be otherwise available, Plaintiffs bear the burden of establishing the underlying right to injunctive relief and must show:

1. Plaintiffs would suffer irreparable harm if the injunction is not granted;
2. Plaintiffs are likely to succeed on the appeal; and
3. Plaintiffs have no adequate remedy at law.

Strategic Resources Co., 367 S.C. at 544, 627 S.E.2d at 689; *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *George Sink PA Inj. Laws.*, , 2019 WL 6318778, at *7; *Alcala*, 2015 WL 7312891, at *7.

Furthermore, a party's delay in moving for a Rule 62 injunction pending appeal weighs against granting the requested injunctive relief. *See Lawson Env't Servs., LLC v. United States*,

[3] "In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (citing *Gardner v. Newsome Chevrolet–Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991)).

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128 Fed. Cl. 14, 19 (2016) (finding a two month delay between the issuance of the order on appeal and the plaintiff's motion for a Rule 62 injunction weighed against granting the requested injunction).

ARGUMENTS

I. Plaintiffs do not, and cannot, establish the right to injunctive relief pursuant to Rule 62(c).

There are two salient predicates for success on Plaintiffs' pending motion. First, they must show that the injunction they seek is necessary to preserve the status quo existing at the time of their appeal. *See E. Bay Sanctuary Covenant v. Barr*, 391 F. Supp. 3d 974, 978 (N.D. Cal. 2019), *aff'd*, 964 F.3d 832 (9th Cir. 2020). Second, they must show that they satisfy not only the Rule 65 conditions and requirements for the injunctive relief, they must also now show that they have the likelihood of success on their pending appeal. *See Alcala*, 2015 WL 7312891, at *7; *George Sink PA Inj. Laws.*, 2019 WL 6318778, at *7 ("[T]he likelihood-of-success inquiry requires defendants to make a clear showing that they are likely to succeed on appeal . . .").

At this stage of the case, Plaintiffs have repeatedly attempted—and failed—to meet their burden for obtaining injunctive relief. First, Plaintiffs failed satisfy the burden to obtain a temporary injunction under Rule 65. Second, Plaintiffs failed to provide the Court with any basis to alter or amend the order denying their motion for injunctive relief. Third, Plaintiffs instituted an appeal based on an effort to have the appellate court overrule the two prior Orders denying them any of the injunctive relief they sought. Now, Plaintiffs move the Court to issue a Rule 62(c) injunction pending that appeal. This new motion is based upon the same arguments and facts raised and rejected by the Court in the Orders denying Plaintiffs' prior requests for injunctive relief. Nonetheless, Plaintiffs unremittingly ask for a different outcome and seek improperly to change the very circumstances upon which their entire appeal is based.

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Plaintiffs' mere repetition of the same arguments raised in their original Motion, and again in their Rule 59(e) Motion, does not satisfy their burden to establish entitlement now to a Rule 62(c) injunction. Plaintiffs merely repeat the same failed arguments from their first two Motions to this Court and seek to rely on the same unsupported accusations that this Court has twice rejected. A Rule 62(c) Motion based merely on repetitive and failed arguments previously submitted in support of the prior requests for injunctive relief is inadequate and must be rejected. *See S.C. Elec. & Gas Co. v. Randall*, No. 3:18-CV-01795-JMC, 2018 WL 3751470, at *2 (D.S.C. Aug. 7, 2018) ("Because SCE&G advances no new arguments on its claims, the court finds SCE&G has not clearly shown it is likely to succeed on the merits of its claims . . . "); *George Sink PA Inj. Laws.*, 2019 WL 6318778, at *8. Repetition of the same arguments that this Court has repeatedly rejected is not sufficient to satisfy the Plaintiffs' heavy burden of demonstrating a likelihood of success on the pending appeal. *See George Sink PA Inj. Laws.*, 2019 WL 6318778, at *8; *Fulton v. City of Philadelphia*, No. CV 18-2075, 2018 WL 11306951, at *1 (E.D. Pa. July 24, 2018); *Lawson Env't Servs., LLC v. United States*, 128 Fed. Cl. 14, 19 (2016). A mere effort to wear the Court out with repetition of the same failed theories and arguments, or the effort merely to badger the Court for a different result, is not within the purview of Rule 62(c). Therefore, the Court should find that Plaintiffs have failed to carry the legal and evidentiary burden to establish that Plaintiffs are likely to succeed on their pending appeal and, therefore, cannot establish the right to the extraordinary relief under Rule 62(c). Accordingly, the Court should deny Plaintiffs' Motion for a Rule 62(c) injunction.

A. The injunctive relief requested by Plaintiffs is not necessary to preserve, and would not preserve the status quo existing at the time Plaintiffs filed their appeal in this case.

As noted above, the controlling legal standard for a Rule 62(c) injunction is that the injunction be required to maintain the status quo at the time of the appeal. *See E. Bay Sanctuary*

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Covenant, 391 F. Supp. 3d 974, 978 ("For the purposes of Rule 62 . . . , "status quo" means the state of affairs at the time the appeal was filed."); *Apple, Inc.*, 2012 WL 1987042, at *2. The purported status quo at the time the original suit was filed, or when the original request for injunctive relief was made, is not relevant. Even crediting Plaintiffs' allegations, at the time their appeal in this case was initiated: (i) all claims against the original physician Defendants had been released and dismissed; (ii) contrary to Plaintiffs' misrepresentations, in the Settlement Agreements between the physicians and the Plaintiffs, the physicians had merely agreed to destroy certain documents and records but never agreed they could not or would not use any knowledge or information acquired while employed by Plaintiffs or reflected in the various documents and records at issue to carry on their practice of medicine at Trident; and (iii) whatever documents and records relative to the physicians which had previously been delivered to Trident by MUSC or the physicians remained unrestricted with Trident. This was the status quo at the time of the appeal. Indeed, this status quo is the specific basis for Plaintiffs' appeal.

However, Plaintiffs' Rule 62(c) Motion does not seek to protect this status quo. Instead, Plaintiffs improperly ask the Court to materially alter the current status quo in their favor. The law does not sanction manufacturing a fictional status quo that Plaintiffs contend existed prior to the filing of the Complaint as the foundational basis for the issuance of a Rule 62(c) injunction while an appeal is pending. In fact, the purpose of a Rule 62 injunction is to preserve the status quo at the time the appeal was commenced. *See Flatiron Health, Inc. v. Carson*, No. 19 CIV. 8999 (VM), 2020 WL 416423, at *3 (S.D.N.Y. Jan. 27, 2020) ("courts may 'modif[y] . . . injunction orders during the pendency of an appeal,' but 'only to preserve the status quo as of the time of the appeal.'" (citation omitted)). The status quo in this case at the time the appeal was filed was that there was no injunction in place. Trident was permitted to maintain possession of the documents and records which were previously provided to it either by the physicians or other persons at

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MUSC. Indeed, at no time, including the time of the appeal, have Plaintiffs established that the disputed documents or records constitute protectable trade secrets or confidential or proprietary information.

Application of these legal principles is reflected in *Apple, Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2012 WL 1987042, at *2 (N.D. Cal. June 4, 2012). In that case, the Court considered Apple's motion for a Rule 62(c) injunction. At issue in the underlying litigation were Apple's claims that Samsung's products, including the Galaxy Tab 10.1, infringed on Apple's design patents. Apple sought to enjoin Samsung from continuing to infringe on its design patents though the sale of certain products. At the time of the appeal, Samsung was engaged in selling the Galaxy Tab 10.1 which purportedly included the use of Apple's design patents and intellectual property. While the appeal was pending, Apple moved the Court to issue a Rule 62(c) injunction prohibiting Samsung from selling the Galaxy Tab 10.1. The Court denied Apple's motion because granting the requested injunction and prohibiting Samsung from selling the Galaxy Tab 10.1 would change the status quo that existed at the time of the appeal. *Apple, Inc.*, 2012 WL 1987042, at *2. Therefore, Samsung was permitted to continue selling the Galaxy Tab 10.1 while Apple argued on appeal that the Court erred in failing to grant its request for injunctive relief barring Samsung from continuing to sell products that infringed on Apple's design patents.

In the present case, Plaintiffs' request for "a temporary injunction prohibiting Hospital Defendants from retaining and using Plaintiffs' Property while the appeal is pending" would alter the status quo as of the time the appeal was filed. When Plaintiffs filed their appeal (March 21, 2022) no injunction was in place and there was no prohibition on the possession or use by Trident of any of the documents or information at issue. Furthermore, Defendant Physicians were already performing head and neck oncology procedures at Trident's facilities.

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The Settlement Agreements executed by and between the Defendant Physicians and Plaintiffs do not bar the Defendant Physicians from using the documents or knowledge and skills associated with providing head and neck oncology treatment at Trident's facilities. Rather, those Settlement Agreements only require the Defendant Physicians to destroy certain documents and records. For Plaintiffs to have voluntarily executed settlements with the physicians on these terms but then seek to prevent Trident (where the physicians carry on their medical practices) from "retaining and using" the same information that the physicians are free to use, is not merely inconsistent, it is incongruous. For example, the disputed physician preference cards indicate how a particular Defendant Physician prefers to have his or her operating room set up for surgery. If Trident's "retention and use" of information about the surgeon's preferences were enjoined, MUSC might argue that any surgeries at Trident that reflected a Defendant Physician's past preferences were also enjoined. So construed, the requested injunction would gut a key provision of the Defendant Physicians' settlements with MUSC, making it impossible for them to perform their surgeries at Trident.

Plaintiffs' Motion does not preserve the status quo at the time of the appeal and it cannot be granted.

B. Plaintiffs do not, and cannot, establish that there is a likelihood of success on their appeal.

Now, pursuant to Rule 62(c), Plaintiffs are required to carry the full burden they failed to carry twice before, and additionally they are required to demonstrate a likelihood of success on the merits of their appeal. *Alcala*, 2015 WL 7312891, at *7; *George Sink PA Inj. Laws.*, 2019 WL 6318778, at *7. In order to establish a likelihood of success on the merits of their appeal, Plaintiffs are required to establish that it is likely the appellate court will find that this Court abused its discretion in denying the original Motion for Temporary Injunction and the subsequent related Rule 59(e) Motion. *See Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 307, 811 S.E.2d

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758, 766 (2018). Thus, to succeed on the pending Rule 62(c) Motion, Plaintiffs bear the burden of establishing the likelihood that this Court's prior decisions denying Plaintiffs' requests for injunctive relief will be found by the appellate court to be without evidentiary support, or to be based upon an error of law. *Id.* (citing *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)). If the Court is unable to conclude that it abused its discretion in its prior Orders now on appeal, or that its prior Orders lacked evidentiary support or were the product of an error of law, it cannot conclude that Plaintiffs are likely to succeed on the merits of their appeal. Indeed, in their Motion and arguments to the Court, Plaintiffs never even acknowledge or address this burden they face, and they never establish a likelihood of success on their appeal. Thus, Plaintiffs' Rule 62(c) Motion must be denied.

II. Granting Plaintiffs an injunction as they request at this time would actually disrupt the status quo as it existed at the time they commenced their appeal, and is certainly not appropriate under Rule 241(c)(2), SCACR, to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

The purpose of Rule 62 is to preserve the status quo while an appeal is pending—not to allow Plaintiffs another bite at the apple or to materially alter the status of the issues on appeal. Actions taken pursuant to Rule 62(c) may not materially alter the status of the case on appeal. *See* Allan Ides, *The Authority of A Federal District Court to Proceed After A Notice of Appeal Has Been Filed*, 143 F.R.D. 307, 322 (1992) ("[A]ction taken pursuant to Rule 62(c) must be designed to aid the appeal and, accordingly, may not materially alter the status of the case on appeal.").

The Rule 62(c) standard is similar to the standard the Court is to apply in ruling on a Motion pursuant to Rule 241 of the South Carolina Appellate Court Rules. In reviewing a Rule 241 Motion, the Court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. There is no need for such action in this case, and Plaintiffs' pending Motion would not serve these limited objectives.

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The court in *Apple Inc.*, 2012 WL 1987042, at *2, reviewed a request for a Rule 62 injunction. The Court found that Apple's requested injunction would materially alter the status of the case that was pending on appeal and denied Apple's motion. *Apple, Inc.*, 2012 WL 1987042, at *2. The Court summarized the status of that case as follows:

> Apple's motion for a Rule 62(c) injunction . . . seeks to have the Court adjudicate anew the preliminary injunction motion while the same issue is on appeal before the Federal Circuit. Were this Court to grant the preliminary injunction before the mandate issues, the Court would effectively alter the status quo. In this case, Samsung was engaged in selling the Galaxy Tab 10.1 at the time of the appeal. Thus, granting an injunction would prohibit Samsung from selling the Galaxy Tab 10.1, altering the respective rights of the parties and changing the status quo that existed at the time of the appeal.

Apple, Inc., 2012 WL 1987042, at *2. Because Apple's Rule 62 Motion sought to materially alter the status of the case pending appeal, the Court denied Apple's Motion for a Rule 62 injunction. If the Court were to have granted Apple's motion for a Rule 62 injunction, then status of the case pending on appeal before the Federal Circuit would have been essentially reversed. Indeed, Apple tried to obtain the very relief through Rule 62(c) which it had been denied through Rule 65 and which relief was the very subject of the pending appeal. Rule 62(c) does not condone such attempts. Samsung would have been barred from continuing its business operations (selling the Galaxy Tab 10.1) and Apple would have obtained the very relief it was seeking on appeal. The Court in *Apple* found that such a result would materially alter the status of the pending appeal and, therefore, denied Apple's motion for a Rule 62 injunction.

In the present case, if the Court were to grant Plaintiffs' requested relief, then the issues on appeal would effectively be mooted. *See Coastal Corp. v. Texas E. Corp.*, 869 F.2d 817, 819 (5th Cir. 1989) (stating a district court does not have the authority under Rule 62 to issue an order that would render the issues on appeal moot). The status of the appeal would be materially, indeed fundamentally, altered, granting the very relief the appeal seeks to obtain. The orders denying

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Plaintiffs' request for injunctive relief are currently pending on appeal. The Court issued the orders denying Plaintiffs' requests for injunctive relief because Plaintiffs failed to carry their burden of establishing that they are entitled to the extraordinary injunctive relief requested. Now—based on the same arguments—Plaintiffs request the Court issue an order granting them the same injunctive relief they were previously denied and which issue is the subject of the pending appeal. Granting the Plaintiffs the requested injunctive relief at this time through Rule 62(c) would materially alter the status of the case and the issues on appeal.

III. Plaintiffs' delay in pursuing the requested injunctive relief is an additional ground for the Court to find that Plaintiffs will not suffer irreparable harm during the pendency of their appeal, and to deny the request for extraordinary relief under Rule 62(c).

While Plaintiffs now want the Court to believe that it must act urgently to grant them this third attempt to obtain an injunction in order to avoid irreparable harm, their own actions belie this assertion. In truth, Plaintiffs have repeatedly delayed taking available action to seek the injunctive relief for which they now cry.

In *Lawson Environmental Services, LLC v. United States*, 128 Fed. Cl. 14, 19 (2016), the Court found that the plaintiff's delay in seeking the injunctive relief weighed against a finding that irreparable harm would result if the requested Rule 62 injunction was not granted. In *Lawson*, the plaintiff moved for an injunction to stop a joint venture from performing certain environmental remediation services pursuant to a contract with the EPA. In *Lawson*, the contract in dispute was awarded on September 29, 2015. The plaintiff protested the award and filed its complaint on December 18, 2015. On March 25, 2016, the Court entered judgment in favor of the defendant. Almost two months later, on May 20, 2016, the plaintiff filed their notice of appeal. Eleven days later, the plaintiff filed a motion for a Rule 62(c) injunction. After concluding that the plaintiff failed to demonstrate a likelihood of success on the merits of the appeal because the plaintiff

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merely reargued the same issues that were addressed in the prior orders, the Court also found that the plaintiff's claim of irreparable harm was "belied by its lack of urgency in seeking [the requested] injunction." *Lawson*, 128 Fed. Cl. at 19.

Similar to the plaintiff in *Lawson*, the Plaintiffs in this case have repeatedly shown a lack of urgency in seeking the requested injunctive relief. Plaintiffs delayed and waited to file their Motion to Alter or Amend the Order denying their Motion for Temporary Injunction until the last possible day. Then, after denial of their Motion to Alter or Amend, Plaintiffs delayed in filing their Notice of Appeal until the last possible day. Then, Plaintiffs moved the Court for protection, not only for the one lawyer in issue, but for the Plaintiffs themselves, from hearings on any motion for a three week period (March 24, 2022 through April 15, 2022). Furthermore, Plaintiffs have further delayed perfecting their appeal by obtaining a thirty (30) day extension to file their initial brief.

Just as in *Lawson*, Plaintiffs in this case have demonstrated a lack of urgency by repeated delay. This fact weighs against any Court concluding that Plaintiffs will suffer irreparable harm if their Motion for a Rule 62(c) injunction pending appeal is not granted.

In fact, granting the Plaintiffs their requested relief would essentially place Trident in the position of the appellant who is arguing that the order granting Plaintiffs the requested relief should be reversed and Plaintiffs would be placed in the position of the respondent who is arguing that the injunction should remain in force. Such a material alteration—based on the same arguments that have twice been rejected—is not proper under either Rule 62(c) or Rule 241, SCACR.

Accordingly, the Court should deny Plaintiffs' Motion because it is an attempt to materially alter the status of the case while the appeal is pending.

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CONCLUSION

Based on the foregoing, Plaintiffs' Motion should be DENIED.

s/James Lynn Werner
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Attorneys for Defendants HCA Healthcare, Inc. and Trident Medical Center, LLC

May 6, 2022
Columbia, South Carolina

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and Eric J. Lentsch, M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement. As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

1. **Payment**. For the consideration stated herein, Physician agrees to issue payments totaling $317,817.00 as directed by MUSC and UMA in written payment instructions provided by MUSC and UMA at the time of their execution and delivery of this Agreement: $93,475.59 by or before January 6, 2022; and twenty-four equal, consecutive monthly payments of $9,347.56, which shall begin to be due and payable on February 6, 2022, and shall continue to be due and payable on the sixth day of the following twenty-three months. If the sixth day of a month falls on a weekend or a bank holiday, then the due date shall not occur until the next business day. If Physician fails to make timely payment of any of the payment obligations in this Paragraph 1 and MUSC/UMA brings an action for collection, the Parties agree that MUSC/UMA can recover reasonable attorney's fees and costs associated with such action.

2. **Destruction of Information and Return of Personal Property**. Physician hereby warrants that he has destroyed, or shall destroy by December 8, 2021, the following specific documents or records (including photocopies) to the extent that any are in Physician's possession, custody or control: physician preference cards, case logs, or instrument lists created during his

employment with MUSC & membership with UMA; documents reflecting MUSC & UMA's revenues from work performed by Physician; and documents or copies reflecting the salary information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, he will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**"). Rather, as material consideration for this Agreement and in exchange for the release provided herein, Physician has executed and delivered to MUSC & UMA a letter of encouragement to Drs. Amin, Aylward, Thal and Hanba provided herewith for MUSC & UMA to deliver to the fellows.

b. **ATC**. During the Restriction Period, Physician covenants that he will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that he

is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall not be construed to prevent the Physician from answering or communicating with the ATC about the training of fellows under Physician or that fellow's qualification for membership and letters.

Likewise, during the Restriction Period, MUSC and UMA covenants that it will instruct Patrick J. Cawley, M.D., Ramond N. Dubois, M.D., Robert Labadie, M.D., Jason Newman, M.D., and Paul R. Lambert, M.D. and any faculty in the Head and Neck Oncology Division to refrain from making any disparaging comments or statements to the Advance Training Council of the American Head & Neck Society regarding the Physician. Physician agrees to return his MUSC issued laptop by December 8, 2021.

c. **Other current employees.** During the Restriction Period, Physician covenants that he shall not take any action to knowingly solicit any then-current employee of MUSC or member of UMA to terminate their employment with MUSC or membership with UMA.

4. **Physician Covenants and Warranties Regarding Other Claims**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. Physician warrants that he has not knowingly engaged, directly or indirectly, in any acts or omissions that he believes to be negligent or unlawful during his employment with MUSC or membership with UMA;

b. Physician covenants that he will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA except that litigation now pending in the court of common

pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that he will notify the General Counsel for MUSC in writing within seven calendar days of receiving a subpoena for his testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA**.

a. **General Release**. In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action. In further consideration of the covenants and promises of the Physician set forth herein, MUSC hereby releases Physician from any past, present, and future obligations associated in any way with the non-compete agreement and any other restrictive covenant agreement existing by and between Physician and MUSC and forever discharges Physician from any and all claims that were raised or could have bene raised by MUSC in the lawsuit. MUSC agrees that Physician may

engage in the practice of medicine in the restricted territory and may accept compensation for such services.

b. **Exception to Release**. Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC, HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician**. MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action. prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of the first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file, or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of himself and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors

and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto, including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees..

b. **Release of Claims under the ADEA.** As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit

Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, he acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that his execution of the Agreement prior to the expiration of said period was his own voluntary act. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto. Physician also agrees that this Agreement is written in a manner that enables him to fully understand its content and meaning. Physician also agrees that he is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician**. Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against him for any alleged act or omission arising out of or in the course of his

employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit his entitlement to receive any payment or benefit due to Physician, to the extent Physician actually has any entitlement to such payment or benefit, or his beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue**. Physician covenants that he has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference**. If any one or more of the individual defendants identified in the Civil Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly,

the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement. The Parties acknowledge that none of the remuneration granted either Party herein is conditioned on any requirement that either Party or any of their respective physicians or investors make referrals to or be able to make or influence referrals to, or otherwise generate business for the other Party hereto, or any of their respective physicians or investors.

9. **Waiver and Amendment**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. The terms, covenants, representations, warranties and conditions hereof may be waived only by written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by another Party to this Agreement or any duties imposed upon them by law shall not be construed as a waiver of rights to any subsequent or continuing breach of this Agreement of such other Party's duties, obligations or agreements herein contained or imposed by law or for any other cause.

10. **Enforcement**. This Agreement shall be construed, interpreted, and applied in accordance with the law of the State of South Carolina. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the exclusive venue for such issues to be resolved shall be in a state or federal court situated in Charleston County, South Carolina and possessing subject matter jurisdiction over the dispute. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the Parties waive any right to a jury trial on any issues/claims in dispute and hereby agree that any and all disputed issues/claims shall be determined by a single judge.

11. **Entire Agreement and Separability**. This Agreement constitutes the entire agreement

and understanding between the Parties and supersedes and abrogates all prior and contemporaneous oral and written agreements, instructions, directives, or understandings of any kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

Eric J. Lentsch, M.D.

Witness to Signature by Physician:

Printed Name: Kristi Lentsch

Dated: December 7, 2021

Medical University of South Carolina

Signature

By: PATRICK T CAWLEY MD

Its: VP of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA A BRISKIN

Dated: December 9, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE S. YONG, MD.

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA

Printed Name: ANDREA H BRISKIN

Dated: December 8, 2021

Dear Drs. Amin, Aylward, Thal, and Hanba:

As you know, I made the difficult decision to leave MUSC and continue my practice elsewhere. MUSC and I have resolved our legal dispute, and we agree that your best interests as current and incoming fellows are our collective priority.

I am advised that MUSC has engaged in extensive efforts to ensure that MUSC's AHNS accreditation is maintained and the ATC quantitative and qualitative accreditation requirements are met through the remainder of this academic year. I trust that MUSC has recruited physicians and physician leaders who will continue MUSC's strong tradition of offering a high quality AHNS accredited fellowship.

I understand that Dr. Leila Mady has joined as a clinical instructor in the MUSC Head and Neck Division, Dr. Robert Labadie is the incoming Chair of Otolaryngology - Head and Neck Surgery, and Dr. Jason Newman is joining MUSC as the Division Director. These are all outstanding physicians and faculty.

MUSC has an exceptional reputation, and through my independent experience and accumulated knowledge prior to joining MUSC, myself and the Head and Neck Division faculty have built an outstanding reputation over the last two decades. I am confident MUSC is committed to maintaining its high quality for both patient care and resident and fellow education and training. As you have trusted in me to assist in your training from 2021-22, I hope to continue to assist your training however possible. While I acknowledge that your decision to continue your training at MUSC or other locations is your decision and at the discretion of the ATC, I encourage you to complete your fellowship at MUSC.

Sincerely,

Eric J. Lentsch, M.D.

Dated: December 7, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **Eric J. Lentsch, M.D.**, knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.

Eric J. Lentsch, M.D. Date: 12/7/21

Witness (Name) Date: 12/7/21

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and Betsy K. Davis, D.M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

1. **Payment**. For the consideration stated herein, Physician agrees to issue payments totaling $201,150.00 as directed by MUSC and UMA in written payment instructions provided by MUSC and UMA at the time of their execution and delivery of this Agreement: $59,161.76 by or before January 6, 2022; and twenty-four equal, consecutive monthly payments of $5,916.18, which shall begin to be due and payable on February 6, 2022, and shall continue to be due and payable on the sixth day of the following twenty-three months. If the sixth day of a month falls on a weekend or a bank holiday, then the due date shall not occur until the next business day. If Physician fails to make timely payment of any of the payment obligations in this Paragraph 1 and MUSC/UMA brings an action for collection, the Parties agree that MUSC/UMA can recover reasonable attorney's fees and costs associated with such action.

2. **Destruction of Information and Return of Personal Property**. Physician hereby warrants that she has destroyed, or shall destroy by December 8, 2021, the following specific documents or records (including photocopies) to the extent that any are in Physician's possession, custody or control: physician preference cards, case logs, or instrument lists created during his employment with MUSC & membership with UMA; documents reflecting MUSC & UMA's revenues from work performed by Physician; and documents or copies reflecting the salary

information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, she will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict her from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**").

b. **ATC**. During the Restriction Period, Physician covenants that she will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that she is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall not be construed to prevent the Physician from answering or communicating with the ATC about the training of fellows under Physician or that fellow's qualification for membership and letters.

Likewise, during the Restriction Period, MUSC and UMA covenants that it will instruct Patrick J. Cawley, M.D., Ramond N. Dubois, M.D., Robert Labadie, M.D., Jason Newman, M.D.,

and Paul R. Lambert, M.D. and any faculty in the Head and Neck Oncology Division to refrain from making any disparaging comments or statements to the Advance Training Council of the American Head & Neck Society regarding the Physician.

c. **Other current employees.** During the Restriction Period, Physician covenants that she shall not take any action to knowingly solicit any then-current employee of MUSC or UMA to terminate their employment with MUSC or membership with UMA.

4. **Physician Covenants and Warranties Regarding Other Claims**. Physician makes the following covenants subject to the agreement that these do not restrict her from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. Physician warrants that she has not knowingly engaged, directly or indirectly, in any acts or omissions that she believes to be negligent or unlawful during her employment with MUSC or membership with UMA;

b. Physician covenants that she will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during her former employment with MUSC or membership with UMA except that litigation now pending in the court of common pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that she will notify the General Counsel for MUSC in writing within seven calendar days of receiving a subpoena for her testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during her former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA.**

a. **General Release.** In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician, and her heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action.

b. **Exception to Release.** Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC or HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician.** MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file, or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of herself and her heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto,

including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees.

b. **Release of Claims under the ADEA.** As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, she acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that her execution of the Agreement prior to the expiration of said period was her own voluntary act. Physician also agrees that this Agreement is written in a manner that enables her to fully understand its content and meaning. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto. Physician also agrees that she is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician.** Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against her for any alleged act or omission arising out of or in the course of her employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit her entitlement to receive any payment or benefit due to Physician, to the extent Physician actually has any entitlement to such payment or benefit, or her beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue.** Physician covenants that she has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference.** If any one or more of the individual defendants identified in the Civil

Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly, the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement. The Parties acknowledge that none of the remuneration granted either Party herein is conditioned on any requirement that either Party or any of their respective physicians or investors make referrals to or be able to make or influence referrals to, or otherwise generate business for the other Party hereto, or any of their respective physicians or investors.

9. **Waiver and Amendment**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. The terms, covenants, representations, warranties and conditions hereof may be waived only by written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by another Party to this Agreement or any duties imposed upon them by law shall not be construed as a waiver of rights to any subsequent or continuing breach of this Agreement of such other Party's duties, obligations or agreements herein contained or imposed by law or for any other cause.

10. **Enforcement**. This Agreement shall be construed, interpreted, and applied in accordance with the law of the State of South Carolina. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the exclusive venue for such issues to be resolved shall be in a state or federal court situated in Charleston County, South Carolina and possessing subject matter jurisdiction over the dispute. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the Parties waive any right to a jury trial on any issues/claims in dispute and hereby agree that any and all disputed issues/claims shall be determined by a single judge.

11. **Entire Agreement and Separability**. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and abrogates all prior and contemporaneous oral and written agreements, instructions, directives, or understandings of any kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

Betsy K. Davis, DMD, MS

Betsy K. Davis, D.M.D.

Witness to Signature by Physician:

Printed Name: ERIC CONNSCH

Dated: December 7, 2021

[MUSC and UMA Signatures on Following Page]

Medical University of South Carolina

Signature

By: PATRICK T. CAWLEY, MD

Its: VP of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE HONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **Betsy K. Davis, D.M.D.** knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.

Betsy K. Davis DMD, MS — 12/7/2021

Betsy K. Davis, D.M.D. — Date

Witness (Name) — 12/7/21

Date

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and Terry A. Day, M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement. As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

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information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, he will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**"). Rather, as material consideration for this Agreement and in exchange for the release provided herein, Physician has executed and delivered to MUSC & UMA a letter of encouragement to Drs. Amin, Aylward, Thal and Hanba provided herewith for MUSC & UMA to deliver to the fellows.

b. **ATC**. During the Restriction Period, Physician covenants that he will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that he is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall not be construed to prevent the Physician from answering or communicating with the ATC about

the training of fellows under Physician or that fellow's qualification for membership and letters.

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c. **Other current employees**. During the Restriction Period, Physician covenants that he shall not take any action to knowingly solicit any then-current employee of MUSC or member of UMA to terminate their employment with MUSC or membership with UMA.

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a. Physician warrants that he has not knowingly engaged, directly or indirectly, in any acts or omissions that he believes to be negligent or unlawful during his employment with MUSC or membership with UMA;

b. Physician covenants that he will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA except that litigation now pending in the court of common pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that he will notify the General Counsel for MUSC in writing

within seven calendar days of receiving a subpoena for his testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA**.

General Release. In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action.

b. **Exception to Release**. Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC, HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician**. MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file,

or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of himself, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of

the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto, including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees.

b. **Release of Claims under the ADEA**. As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, he acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that his execution of the Agreement prior to the expiration of said period was his own voluntary act. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto.

Physician also agrees that this Agreement is written in a manner that enables him to fully understand its content and meaning. Physician also agrees that he is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician**. Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against him for any alleged act or omission arising out of or in the course of his employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit his entitlement to receive any payment or benefit due to Physician, to the extent Physician actually has any entitlement to such payment or benefit, or his beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue**. Physician covenants that he has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University

Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference**. If any one or more of the individual defendants identified in the Civil Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly, the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement. The Parties acknowledge that none of the remuneration granted either Party herein is conditioned on any requirement that either Party or any of their respective physicians or investors make referrals to or be able to make or influence referrals to, or otherwise generate business for the other Party hereto, or any of their respective physicians or investors.

9. **Waiver and Amendment**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. The terms, covenants, representations, warranties and conditions hereof may be waived only by written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by another

Party to this Agreement or any duties imposed upon them by law shall not be construed as a waiver of rights to any subsequent or continuing breach of this Agreement of such other Party's duties, obligations or agreements herein contained or imposed by law or for any other cause.

10. **Enforcement**. This Agreement shall be construed, interpreted, and applied in accordance with the law of the State of South Carolina. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the exclusive venue for such issues to be resolved shall be in a state or federal court situated in Charleston County, South Carolina and possessing subject matter jurisdiction over the dispute. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the Parties waive any right to a jury trial on any issues/claims in dispute and hereby agree that any and all disputed issues/claims shall be determined by a single judge.

11. **Entire Agreement and Separability**. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and abrogates all prior and contemporaneous oral and written agreements, instructions, directives, or understandings of any kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate

counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

Terry A. Day, M.D.

Witness to Signature by Physician:

Printed Name: ALAN BAYLOUIS

Dated: December 7, 2021

[MUSC and UMA Signatures on Following Page]

Medical University of South Carolina

Signature

By: PATRICK T. CAWLEY, MD

Its: VP of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE YONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **Terry A. Day, M.D.** knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.

Terry A. Day, M.D. — Date: 12/7/2021

Witness (Name) ALAN BARKOWITZ — Date: 12/7/2021

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and Anand K. Sharma, M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

1. **Payment**. For the consideration stated herein, Physician agrees to issue payments totaling $201,150.00 as directed by MUSC and UMA in written payment instructions provided by MUSC and UMA at the time of their execution and delivery of this Agreement: $59,161.76 by or before January 6, 2022; and twenty-four equal, consecutive monthly payments of $5,916.18, which shall begin to be due and payable on February 6, 2022, and shall continue to be due and payable on the sixth day of the following twenty-three months. If the sixth day of a month falls on a weekend or a bank holiday, then the due date shall not occur until the next business day. If Physician fails to make timely payment of any of the payment obligations in this Paragraph 1 and MUSC/UMA brings an action for collection, the Parties agree that MUSC/UMA can recover reasonable attorney's fees and costs associated with such action.

2. **Destruction of Information and Return of Personal Property**. Physician hereby warrants that he has destroyed, or shall destroy by December 8, 2021, the following specific documents or records (including photocopies) to the extent that any are in Physician's possession, custody or control: physician preference cards, case logs, or instrument lists created during her employment with MUSC & membership with UMA; documents reflecting MUSC & UMA's revenues from work performed by Physician; and documents or copies reflecting the salary

information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, he will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**").

b. **ATC**. During the Restriction Period, Physician covenants that he will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that he is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall not be construed to prevent the Physician from answering or communicating with the ATC about the training of fellows under Physician or that fellow's qualification for membership and letters.

Likewise, during the Restriction Period, MUSC and UMA covenants that it will instruct Patrick J. Cawley, M.D., Ramond N. Dubois, M.D., Robert Labadie, M.D., Jason Newman, M.D.,

and Paul R. Lambert, M.D. and any faculty in the Head and Neck Oncology Division to refrain from making any disparaging comments or statements to the Advance Training Council of the American Head & Neck Society regarding the Physician.

c. **Other current employees**. During the Restriction Period, Physician covenants that he shall not take any action to knowingly solicit any then-current employee of MUSC or UMA to terminate their employment with MUSC or membership with UMA.

4. **Physician Covenants and Warranties Regarding Other Claims**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. Physician warrants that he has not knowingly engaged, directly or indirectly, in any acts or omissions that he believes to be negligent or unlawful during his employment with MUSC or membership with UMA;

b. Physician covenants that he will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA except that litigation now pending in the court of common pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that he will notify the General Counsel for MUSC in writing within seven calendar days of receiving a subpoena for his testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA**.

a. **General Release**. In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action.

b. **Exception to Release**. Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC or HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician**. MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file, or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of himself and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto,

including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees.

b. **Release of Claims under the ADEA**. As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, he acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that his execution of the Agreement prior to the expiration of said period was his own voluntary act. Physician also agrees that this Agreement is written in a manner that enables him to fully understand its content and meaning. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto. Physician also agrees that he is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician**. Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against him for any alleged act or omission arising out of or in the course of his employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit his entitlement to receive any payment or benefit due to Physician, to the extent Physician actually has any entitlement to such payment or benefit, or his beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue**. Physician covenants that he has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference**. If any one or more of the individual defendants identified in the Civil

Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly, the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement. The Parties acknowledge that none of the remuneration granted either Party herein is conditioned on any requirement that either Party or any of their respective physicians or investors make referrals to or be able to make or influence referrals to, or otherwise generate business for the other Party hereto, or any of their respective physicians or investors.

9. **Waiver and Amendment**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. The terms, covenants, representations, warranties and conditions hereof may be waived only by written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by another Party to this Agreement or any duties imposed upon them by law shall not be construed as a waiver of rights to any subsequent or continuing breach of this Agreement of such other Party's duties, obligations or agreements herein contained or imposed by law or for any other cause.

10. **Enforcement**. This Agreement shall be construed, interpreted, and applied in accordance with the law of the State of South Carolina. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the exclusive venue for such issues to be resolved shall be in a state or federal court situated in Charleston County, South Carolina and possessing subject matter jurisdiction over the dispute. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the Parties waive any right to a jury trial on any issues/claims in dispute and hereby agree that any and all disputed issues/claims shall be determined by a single judge.

11. **Entire Agreement and Separability**. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and abrogates all prior and contemporaneous oral and written agreements, instructions, directives, or understandings of any kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

Anand K. Sharma, M.D.

Witness to Signature by Physician:

Printed Name: Chrystal Wilson

Dated: December 08, 2021

[MUSC and UMA Signatures on Following Page]

Medical University of South Carolina

Signature

By: PATRICK J. CAWLEY, MD

Its: CMO of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE FONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

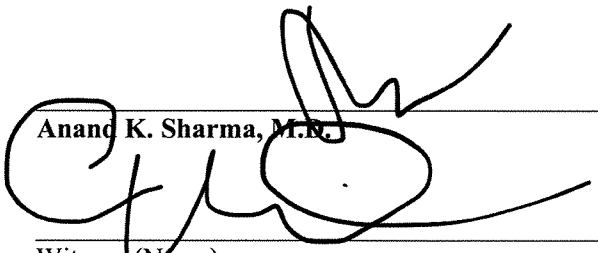
Witness to Signature by UMA

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **Anand K. Sharma, M.D.**knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.



Anand K. Sharma, M.D.

12/8/2021

Date

Witness (Name)

Chrystal Wilson

12/8/2021

Date

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and Joshua D. Hornig, M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement. As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

1. **Payment**. For the consideration stated herein, Physician agrees to issue payments totaling $447,866.00 as directed by MUSC and UMA in written payment instructions provided by MUSC and UMA at the time of their execution and delivery of this Agreement: $131,725.29 by or before February 6, 2022; and twenty-four equal, consecutive monthly payments of $13,172.53 which shall begin to be due and payable on March 6, 2022, and shall continue to be due and payable on the sixth day of the following twenty-three months. If the sixth day of a month falls on a weekend or a bank holiday, then the due date shall not occur until the next business day. If Physician fails to make timely payment of any of the payment obligations in this Paragraph 1 and MUSC/UMA brings an action for collection, the Parties agree that MUSC/UMA can recover reasonable attorney's fees and costs associated with such action.

2. **Destruction of Information and Return of Personal Property**. Physician hereby warrants that he has destroyed, or shall destroy by December 8, 2021, the following specific documents or records (including photocopies) to the extent that any are in Physician's possession, custody or control: physician preference cards, case logs, or instrument lists created during his employment with MUSC & membership with UMA; documents reflecting MUSC & UMA's

revenues from work performed by Physician; and documents or copies reflecting the salary information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, he will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**"). Rather, as material consideration for this Agreement and in exchange for the release provided herein, Physician has executed and delivered to MUSC & UMA a letter of encouragement to Drs. Amin, Aylward, Thal and Hanba provided herewith for MUSC & UMA to deliver to the fellows.

b. **ATC**. During the Restriction Period, Physician covenants that he will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that he is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall

not be construed to prevent the Physician from answering or communicating with the ATC about the training of fellows under Physician or that fellow's qualification for membership and letters.

Likewise, during the Restriction Period, MUSC and UMA covenants that it will instruct Patrick J. Cawley, M.D., Ramond N. Dubois, M.D., Robert Labadie, M.D., Jason Newman, M.D., and Paul R. Lambert, M.D. and any faculty in the Head and Neck Oncology Division to refrain from making any disparaging comments or statements to the Advance Training Council of the American Head & Neck Society regarding the Physician.

c. **Other current employees**. During the Restriction Period, Physician covenants that he shall not take any action to knowingly solicit any then-current employee of MUSC or member of UMA to terminate their employment with MUSC or membership with UMA.

4. **Physician Covenants and Warranties Regarding Other Claims**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. Physician warrants that he has not knowingly engaged, directly or indirectly, in any acts or omissions that he believes to be negligent or unlawful during his employment with MUSC or membership with UMA;

b. Physician covenants that he will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA except that litigation now pending in the court of common pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that he will notify the General Counsel for MUSC in writing within seven calendar days of receiving a subpoena for his testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA**.

a. **General Release**. In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action. In further consideration of the covenants and promises of the Physician set forth herein, MUSC hereby releases Physician from any past, present, and future obligations associated in any way with the non-compete agreement and any other restrictive covenant agreement existing by and between Physician and MUSC and forever discharges Physician from any and all claims that were raised or could have bene raised by MUSC in the lawsuit. MUSC agrees that Physician may engage in the practice of medicine in the restricted territory and may accept compensation for such services.

b. **Exception to Release**. Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC, HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician**. MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file, or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of himself, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in

their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto, including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees.

b. **Release of Claims under the ADEA**. As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this

Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, he acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that his execution of the Agreement prior to the expiration of said period was his own voluntary act. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto. Physician also agrees that this Agreement is written in a manner that enables him to fully understand its content and meaning. Physician also agrees that he is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician**. Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against him for any alleged act or omission arising out of or in the course of his employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit his entitlement to receive any payment or benefit due to Physician, to the extent

Physician actually has any entitlement to such payment or benefit, or his beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue**. Physician covenants that he has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference**. If any one or more of the individual defendants identified in the Civil Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly, the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement.

kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

Joshua D. Hornig, M.D.

Witness to Signature by Physician:

Printed Name: Alison Shrader

Dated: December 8, 2021

[MUSC and UMA Signatures on Following Page]

Medical University of South Carolina

Signature

By: PATRICK T. CAULEY, MD

Its: VP of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA H. BRISBIN

Dated: December 2, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE HONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA

Printed Name: ANDREA H. BRISBIN

Dated: December 3, 2021

Dear Drs. Amin, Aylward, Thal, and Hanba:

As you know, I made the difficult decision to leave MUSC and continue my practice elsewhere. MUSC and I have resolved our legal dispute, and we agree that your best interests as current and incoming fellows are our collective priority.

I am advised that MUSC has engaged in extensive efforts to ensure that MUSC's AHNS accreditation is maintained and the ATC quantitative and qualitative accreditation requirements are met through the remainder of this academic year. I trust that MUSC has recruited physicians and physician leaders who will continue MUSC's strong tradition of offering a high quality AHNS accredited fellowship.

I understand that Dr. Leila Mady has joined as a clinical instructor in the MUSC Head and Neck Division, Dr. Robert Labadie is the incoming Chair of Otolaryngology - Head and Neck Surgery, and Dr. Jason Newman is joining MUSC as the Division Director. These are all outstanding physicians and faculty.

MUSC has an exceptional reputation, and through my independent experience and accumulated knowledge prior to joining MUSC, myself and the Head and Neck Division faculty have built an outstanding reputation over the last two decades. I am confident MUSC is committed to maintaining its high quality for both patient care and resident and fellow education and training. As you have trusted in me to assist in your training from 2021-22, I hope to continue to assist your training however possible. While I acknowledge that your decision to continue your training at MUSC or other locations is your decision and at the discretion of the ATC, I encourage you to complete your fellowship at MUSC.

Sincerely,

Joshua D. Hornig, M.D.

Dated: December 7, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **Joshua D. Hornig, M.D.** knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.

Joshua D. Hornig, M.D. Date: Dec. 8/21

Witness (Name) Alison Shrader Date: 12/8/21

SETTLEMENT AGREEMENT & RELEASE

This "**Agreement**" is made by and between the Medical University of South Carolina ("**MUSC**"), the University Medical Associates of the Medical University of South Carolina ("**UMA**") and David M. Neskey, M.D. ("**Physician**") effective December 1, 2021 ("**Effective Date**"). MUSC, UMA, and Physician are collectively referred to as the "Parties" in this Agreement, or they may be individually referred to as a "Party" in this Agreement. As consideration for the mutual promises and covenants expressed hereinbelow, the Parties agree as follows:

1. **Payment**. For the consideration stated herein, Physician agrees to issue payments totaling $330,867,00 as directed by MUSC and UMA in written payment instructions provided by MUSC and UMA at the time of their execution and delivery of this Agreement: $97,313.82 by or before January 6, 2022; and twenty-four equal, consecutive monthly payments of $9,731.38 which shall begin to be due and payable on February 6, 2022, and shall continue to be due and payable on the sixth day of the following twenty-three months. If the sixth day of a month falls on a weekend or a bank holiday, then the due date shall not occur until the next business day. If Physician fails to make timely payment of any of the payment obligations in this Paragraph 1 and MUSC/UMA brings an action for collection, the Parties agree that MUSC/UMA can recover reasonable attorney's fees and costs associated with such action.

2. **Destruction of Information and Return of Personal Property**. Physician hereby warrants that he has destroyed, or shall destroy by December 8, 2021, the following specific documents or records (including photocopies) to the extent that any are in Physician's possession, custody or control: physician preference cards, case logs, or instrument lists created during his employment with MUSC & membership with UMA; documents reflecting MUSC & UMA's

revenues from work performed by Physician; and documents or copies reflecting the salary information or contracts of other employees or recruits of MUSC & members of UMA. Likewise, Physician hereby warrants that beginning on the Effective Date, he will refrain from using any of the documents or records specifically referenced in this Section 2. Physician acknowledges that MUSC & UMA contend that the documents or records specifically referenced in this Section 2 are confidential and/or proprietary.

3. **Restrictive Covenants**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. **Fellows**. Beginning on the Effective Date and continuing for a period of twenty-four (24) months (the "**Restriction Period**"), Physician covenants that he shall not take any action to solicit Drs. Amin, Aylward, Thal and Hanba to leave or not participate in MUSC's head and neck fellowship program ("**HNO Fellowship Program**"). Rather, as material consideration for this Agreement and in exchange for the release provided herein, Physician has executed and delivered to MUSC & UMA a letter of encouragement to Drs. Amin, Aylward, Thal and Hanba provided herewith for MUSC & UMA to deliver to the fellows.

b. **ATC**. During the Restriction Period, Physician covenants that he will also refrain from having any communication with the Advanced Training Council of the American Head & Neck Society ("**ATC**") regarding the condition or status of the HNO Fellowship Program after December 1, 2021. If a member of the ATC asks Physician any question about the condition of the HNO Fellowship Program after December 1, 2021, Physician will respond by stating that he is contractually prohibited from discussing the HNO Fellowship Program. This paragraph shall

not be construed to prevent the Physician from answering or communicating with the ATC about the training of fellows under Physician or that fellow's qualification for membership and letters.

Likewise, during the Restriction Period, MUSC and UMA covenants that it will instruct Patrick J. Cawley, M.D., Ramond N. Dubois, M.D., Robert Labadie, M.D., Jason Newman, M.D., and Paul R. Lambert, M.D. and any faculty in the Head and Neck Oncology Division to refrain from making any disparaging comments or statements to the Advance Training Council of the American Head & Neck Society regarding the Physician.

c. **Other current employees**. During the Restriction Period, Physician covenants that he shall not take any action to knowingly solicit any then-current employee of MUSC or member of UMA to terminate their employment with MUSC or membership with UMA.

4. **Physician Covenants and Warranties Regarding Other Claims**. Physician makes the following covenants subject to the agreement that these do not restrict him from making any statement, testimony, or affidavit in connection with the initiation, commencement, defense, or participation as a witness in a civil action, judicial, administrative, or other formal proceeding.

a. Physician warrants that he has not knowingly engaged, directly or indirectly, in any acts or omissions that he believes to be negligent or unlawful during his employment with MUSC or membership with UMA;

b. Physician covenants that he will reasonably cooperate, at MUSC or UMA's expense, in any investigation that MUSC or UMA undertakes into any third-party allegation or lawsuit arising out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA except that litigation now pending in the court of common pleas of Charleston, South Carolina as civil action number 2021-CP-10-05289 (the "**Civil Action**"); and

c. Physician covenants that he will notify the General Counsel for MUSC in writing within seven calendar days of receiving a subpoena for his testimony, other than the Civil Action, that Physician believes arises out of the alleged acts or omissions of Physician during his former employment with MUSC or membership with UMA.

5. **Release by MUSC & UMA**.

a. **General Release**. In exchange for the promises set forth in this Agreement, MUSC and UMA, on behalf of themselves and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, hereby agree to fully release, remise, forever discharge, and acquit Physician and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate ("**Physician Released Parties**") from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including any and all claims that were or could have been asserted in the Civil Action. In further consideration of the covenants and promises of the Physician set forth herein, MUSC hereby releases Physician from any past, present, and future obligations associated in any way with the non-compete agreement and any other restrictive covenant agreement existing by and between Physician and MUSC and forever discharges Physician from any and all claims that were raised or could have bene raised by MUSC in the lawsuit. MUSC agrees that Physician may engage in the practice of medicine in the restricted territory and may accept compensation for such services.

b. **Exception to Release**. Notwithstanding anything herein, the Parties agree that MUSC and UMA do not release, alter, or limit any claims they may have against Trident, LLC, HCA Healthcare, Inc., or any affiliate or related company of Trident, LLC or HCA Healthcare, Inc.

c. **Covenant Not to Sue Physician**. MUSC and UMA covenant that they will take all action necessary to dismiss, without prejudice, Physician from the Civil Action prior to December 9, 2021 and with prejudice from the Civil Action immediately upon the receipt of first payment recounted in paragraph 1 hereof. MUSC and UMA further covenant that they will not initiate, file, or assert any action, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against Physician or any Physician Released Parties for any event, transaction, or occurrence preceding the date of this Agreement.

6. **Release By Physician**.

a. **General Release**. In exchange for the promises set forth in this Agreement, Physician, on behalf of himself, and his heirs, assigns, agents, attorneys, and any trustee, administrator, or beneficiary of Physician's estate, hereby agree to fully release, remise, forever discharge, and acquit MUSC & UMA, and their current and former board members, members, employees, officers, directors, attorneys, insurers, successors, and assigns, both individually and in their business capacities and their employee benefit plans and programs and their administrators and fiduciaries, as well as Carolina Primary Care Physicians, LLC, its affiliated entities (including but not limited to MUSC Health Partners), Carolina Family Care, Inc., Medical University Hospital Authority, MUSC Health Alliance, LLC, and all of the foregoing entities' predecessors and subsidiaries, as well as their current and former board members, members, employees, officers, directors, assigns, attorneys, insurers, successors, and assigns, both individually and in

their business capacities and their employee benefit plans and programs and their administrators and fiduciaries ("**University Released Parties**"), from any and all actions, causes of action, suits, claims sounding in tort or contract, demands, appeals, charges, debts, injuries of any kind, claims for sums of money, claims for attorney's fees and costs, controversies, agreements, damages, judgments, and/or executions of any kind whatsoever, which existed at any time prior to the execution of this Agreement, whether known or unknown, in law, in equity, or otherwise, whether based on common law, state law, federal law, or otherwise, including, without limiting the generality of this General Release, any and all claims or causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), et seq., the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. ("ADEA"), the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. and all amendments thereto, including but not limited to the Amendments to the Americans with Disabilities Act, the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq., the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq., the Equal Pay Act, 29 U.S.C. § 201, et seq., the Lilly Ledbetter Fair Pay Act of 2009, the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq., the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10, et seq., the wrongful termination doctrine of the State of South Carolina, and any other similar federal, state, and local laws. This Release includes all known and unknown claims, and any right to relief resulting from a class action alleging employment related claims filed on behalf of other current or former employees.

b. **Release of Claims under the ADEA**. As this Agreement pertains to the release of claims under the ADEA, Physician, pursuant to and in compliance with the Older Workers Benefit Protection Act: (a) has been advised in writing to consult with an attorney prior to executing this Agreement; (b) has been afforded a period of twenty-one (21) calendar days to consider this

Agreement; and (c) may revoke this Agreement (only with regard to their ADEA waiver and release) during the seven (7) calendar days following its execution. To the extent Physician executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, he acknowledges and agrees that he was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that his execution of the Agreement prior to the expiration of said period was his own voluntary act. If Physician chooses to execute this Agreement before the expiration of the twenty-one (21) calendar day review period, Physician must execute and return a Waiver of Consideration Period, which is attached hereto. Physician also agrees that this Agreement is written in a manner that enables him to fully understand its content and meaning. Physician also agrees that he is waiving and releasing claims (including their ADEA claims) in exchange for valuable consideration.

This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) calendar days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution and on the Effective Date; provided, however, that if Physician revokes this Agreement as provided above, MUSC & UMA may revoke this Agreement in its entirety during the seven (7) calendar day period following receipt of Physician's revocation.

c. **Exception to Release by Physician**. Notwithstanding the foregoing, the Parties agree that Physician retains any right that may exist to insurance coverage or for the immunities and limitations prescribed by the South Carolina Tort Claims Act for any claims that may be asserted against him for any alleged act or omission arising out of or in the course of his employment with MUSC or membership with UMA. Likewise, Physician does not hereby release, alter or limit his entitlement to receive any payment or benefit due to Physician, to the extent

Physician actually has any entitlement to such payment or benefit, or his beneficiaries or assigns under any pension, retirement plan, deferred compensation plan, incentive payments under the Health Alliance ACO for past performance, or other benefit plan, e.g. tax-sheltered annuity plan, or PTO reimbursement, which accrued during Physician's employment with MUSC or membership with UMA.

d. **Covenant Not to Sue**. Physician covenants that he has not and will not initiate, file, or assert any action, motion, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, legal, or equitable) against MUSC, UMA or any University Released Parties for any event, transaction, or occurrence preceding the date of this Agreement except as specifically provided for in this Agreement.

7. **Non-Interference**. If any one or more of the individual defendants identified in the Civil Action choose to return to work with MUSC or UMA, Physician covenants to refrain from then taking any action that prevents such individual defendant from returning to work with MUSC or UMA.

8. **Arms' Length Settlement**. This Agreement is a compromise of disputed claims and is entered into solely to obtain peace and bring an end to litigation. Nothing in this Agreement shall be construed as an admission of liability by the Physician and Physician specifically denies the allegations in the Civil Action. The Parties have knowing and voluntarily entered into this Agreement with the assistance of independent legal counsel and with the intent of settling the dispute between them in full compliance with all applicable local, state and federal laws including, but not limited to, the Medicare/Medicaid Anti-Fraud and Abuse and Stark Laws. Accordingly, the compensation payable to MUSC & UMA has been negotiated in good faith and in arm's length negotiations and represents the fair market value of the disputed claims covered by this Agreement.

The Parties acknowledge that none of the remuneration granted either Party herein is conditioned on any requirement that either Party or any of their respective physicians or investors make referrals to or be able to make or influence referrals to, or otherwise generate business for the other Party hereto, or any of their respective physicians or investors.

9. **Waiver and Amendment**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. The terms, covenants, representations, warranties and conditions hereof may be waived only by written instrument executed by the Party waiving compliance. Waiver by any Party hereto of any breach by another Party to this Agreement or any duties imposed upon them by law shall not be construed as a waiver of rights to any subsequent or continuing breach of this Agreement of such other Party's duties, obligations or agreements herein contained or imposed by law or for any other cause.

10. **Enforcement**. This Agreement shall be construed, interpreted, and applied in accordance with the law of the State of South Carolina. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the exclusive venue for such issues to be resolved shall be in a state or federal court situated in Charleston County, South Carolina and possessing subject matter jurisdiction over the dispute. Should any question arise regarding the breach of this Agreement, or should one of the Parties to this Agreement attempt to enforce this Agreement, the Parties waive any right to a jury trial on any issues/claims in dispute and hereby agree that any and all disputed issues/claims shall be determined by a single judge.

11. **Entire Agreement and Separability**. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes and abrogates all prior and contemporaneous oral and written agreements, instructions, directives, or understandings of any

kind between the Parties to this Agreement, including but not limited to any agreement not to compete. The Parties also understand and agree that in the event any provision of this Agreement is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, the Agreement shall be deemed to be restricted in scope or otherwise modified to the extent necessary to render the same valid and enforceable.

12. **Execution**. The persons signing below on behalf of MUSC and UMA each individually warrants that he or she possesses all necessary authorization to agree to each of the terms in this Agreement and so bind the entity or agency. This Agreement will be executed in duplicate counterparts that may be transmitted to the other party electronically as an .pdf, .jpeg, or .gif file, each of which may be deemed an original hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

By Physician:

David M. Neskey, M.D.

Witness to Signature by Physician:

Printed Name: Michelle Taffner Wesley

Dated: December 8, 2021

[MUSC and UMA Signatures on Following Page]

Medical University of South Carolina

Signature

By: PATRICK T. CALLEY, MD

Its: VP of HEALTH AFFAIRS

Witness to Signature by MUSC

Printed Name: ANDREA H BRISBIN

Dated: December 8, 2021

University Medical Associates of the Medical University of South Carolina

Signature

By: EUGENE HONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA

Printed Name: ANDREA H BRISBIN

Dated: December 8, 2021

Dear Drs. Amin, Aylward, Thal, and Hanba:

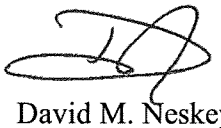
As you know, I made the difficult decision to leave MUSC and continue my practice elsewhere. MUSC and I have resolved our legal dispute, and we agree that your best interests as current and incoming fellows are our collective priority.

I am advised that MUSC has engaged in extensive efforts to ensure that MUSC's AHNS accreditation is maintained and the ATC quantitative and qualitative accreditation requirements are met through the remainder of this academic year. I trust that MUSC has recruited physicians and physician leaders who will continue MUSC's strong tradition of offering a high quality AHNS accredited fellowship.

I understand that Dr. Leila Mady has joined as a clinical instructor in the MUSC Head and Neck Division, Dr. Robert Labadie is the incoming Chair of Otolaryngology - Head and Neck Surgery, and Dr. Jason Newman is joining MUSC as the Division Director. These are all outstanding physicians and faculty.

MUSC has an exceptional reputation, and through my independent experience and accumulated knowledge prior to joining MUSC, myself and the Head and Neck Division faculty have built an outstanding reputation over the last two decades. I am confident MUSC is committed to maintaining its high quality for both patient care and resident and fellow education and training. As you have trusted in me to assist in your training from 2021-22, I hope to continue to assist your training however possible. While I acknowledge that your decision to continue your training at MUSC or other locations is your decision and at the discretion of the ATC, I encourage you to complete your fellowship at MUSC.

Sincerely,



David M. Neskey, M.D.

Dated: December 7, 2021

WAIVER OF CONSIDERATION PERIOD

In compliance with the Older Workers Benefit Protection Act and Age Discrimination in Employment Act (ADEA), I, **David K. Neskey, M.D.** knowingly and voluntarily, with access to and advice of counsel, waive the remainder of the twenty-one (21) day period (the "***Consideration Period***") to further review and consider my release of ADEA claims, which I have now fully considered and reviewed, along with the terms of the Agreement. I affirmatively state that my waiver of the remainder of the Consideration Period is knowing and voluntary, and that my waiver is not induced by MUSC/UMA through fraud, misrepresentation or threat to withdraw or alter the terms of the consideration available to me.

David M. Neskey, M.D. 12/08/2021
Date

Witness (Name)
Date 12/8/21

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1. PREFACE

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Feb 2019	Oct 2019	Sep 2019	Dec 2019	Jan 2020	

The Board of Trustees of the Medical University of South Carolina (hereafter referred to as the "Board" and "MUSC" respectively) is the governing board of the university; however, the university administrators and the members of the faculty of the university share responsibility for planning and implementing cooperative and constructive actions within the institutional structure under the guidance of the Board (Current administrative structures are depicted at the following webpages:

https://web.musc.edu/about/leadership
https://education.musc.edu/leadership/provost

The policies and respective rules governing the Board, the administration, and the faculty, as set forth in the *Faculty Handbook*, should convey the mutual trust and agreement inherent in all explicit and implied contractual agreements between these respective bodies.

The *Faculty Handbook* (hereafter referred to as "the Handbook") contains the rules and regulations that govern faculty affairs and functions as part of the University Faculty Appointment Contract between each faculty member and the university. Faculty members should be knowledgeable about the areas covered in the Handbook. The signing of annual contracts that specify an individual faculty member's compensation and distribution of activity, does not negate the Handbook's status as a partial contract of employment. For more information on Faculty Appointment, Promotion, Evaluaiton, and Tenure Policies, see section 5 of the Handbook.

As representative body of the faculty, the Faculty Senate is expected to offer interpretation of the Handbook to the Office of the Executive Vice President for Academic Affairs and Provost.

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2. INTRODUCTION

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The MUSC *Faculty Handbook* contains university policies that are of major concern to the faculty, other information considered to be of special interest to the faculty, and a collection of university governing documents. The current Board-approved Handbook is accessible on the MUSC Faculty Senate Website (https://education.musc.edu/faculty/faculty-senate).

2.01 Revision Process

The charge of the Governance Committee of the Faculty Senate includes oversight and regular review of the *Faculty Handbook.*

Unless otherwise indicated within the policy, revisions to Sections 2-9 of the *Faculty Handbook* are subject to the following procedures:

- The Senate's Faculty and Institutional Relationships Committee will meet regularly to consider revisions suggested by the Governance Committee, the faculty, the Executive Vice President for Academic Affairs and Provost, or others.
- Changes recommended by the Faculty and Institutional Relationships Committee will be evaluated by the Faculty Senate and presented to the university faculty in writing and/or by e-mail prior to Faculty Senate approval.
- All proposed changes must be approved by the Faculty Senate, the Executive Vice President for Academic Affairs and Provost, the Provost's Council, the President, and the Board of Trustees.

Sections other than 2-9 may be revised by the Executive Vice President for Academic Affairs and Provost, the Provost's Council, and the President with the advice of the Faculty Senate and subject to Board of Trustees approval.

2.02 Abbreviations and Definitions

APT	Appointment, Promotion and Tenure
Board	MUSC Board of Trustees
College	All Colleges and the Academic Affairs Faculty
Deans	Deans of all colleges and the Chair of the Academic Affairs Faculty
EEO/AA	Equal Employment Opportunity/Affirmative Action

Evaluation	Synonymous with appraisal
FMLA	Family and Medical Leave Act
FOIA	Freedom of Information Act
FRD	South Carolina Foundation for Research Development, Inc.
HHS	United States Department of Health Human Services
IRB	Institutional Review Board
MUHA	Medical University Hospital Authority
MUSC	Medical University of South Carolina
MUSC/P	MUSC Physicians (See UMA)
Provost	Executive Vice President for Academic Affairs and Provost
TERI	Teacher and Employee Retiree Incentive Program
UMA	University Medical Associates (See MUSC/P)

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3. FACULTY ORGANIZATION AND GOVERNANCE

3.01 The Faculty Body

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The faculty of MUSC is composed of the President, the vice presidents, the deans, any officers of the university who hold academic rank, and the members of the teaching, research, service and administrative staff who hold academic rank at MUSC or its affiliated programs. With regard to university affairs, the voting faculty shall be those individuals holding a full-time primary academic appointment at MUSC with rank of Instructor and above.

3.02 The Faculty Senate

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The Faculty Senate acts as the sole representative body for organizing and executing that business of the faculty submitted to it by members of the faculty, the administration, or the Senate itself. The Senate also advises the administration and the faculty in matters pertaining to the faculty. The Faculty Senate is organized and governed according to the Faculty Senate Constitution and By-Laws

3.02.01 Faculty Senate Constitution

Senate Approval Date	Faculty Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017		Mar 2018	Apr 2018	May 2018

This Constitution defines the composition of the Faculty Senate, its role in the academic affairs of the university, and the basic principles of self-governance of the faculty of the Medical University of South Carolina as authorized by the Bylaws of the Board of Trustees of the Medical University of South Carolina, Section 6, Article b, August 1976.

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Article I

Name

The name of this representative body shall be: The Medical University of South Carolina Faculty Senate, referred to in this document as Faculty Senate or as Senate.

Article II

Purpose

The purpose of the Faculty Senate shall be to act as the sole representative body of the faculty, to receive, organize and, if deemed appropriate, execute business of the faculty that is submitted to it by members of the faculty, the administration, or the Faculty Senate itself, and to represent the views of the faculty to the administration. The Faculty Senate serves as the voice of the faculty. In accordance with its vision and as permitted by state law, the Faculty Senate serves as an advisor to the administration in ensuring the success of the university's mission in teaching, research, and service.

Article III

Electoral Units, Representation, Nominations, Eligibility to Vote, Elections, and Terms of Office

Membership shall be limited to qualified faculty. For the purposes of the Faculty Senate membership, qualified faculty are defined as those persons holding primary academic appointments of at least 50% FTE at MUSC with ranks of Instructor or above.All faculty regardless of FTE shall be able to nominate for and vote in Faculty Senate elections. (Paragraph amended May 2017)

A. Electoral Units

For the purpose of elections, the Faculty Senate shall be divided into seven Electoral Units: College of Medicine Basic Sciences, College of Medicine Clinical Sciences, Dental Medicine, Health Professions, Academic Affairs Faculty, Nursing, and Pharmacy. The department or college of primary appointment determines Electoral Unit affiliation.

B. Representation

Senators

Electoral Units having 50 or fewer qualified faculty shall be represented by four Senators. Electoral Units having between 51 and 100 qualified members shall be represented by six Senators. Electoral Units with more than 100 qualified faculty members shall have six Senators and elect one additional Senator for every 33 additional qualified faculty members in excess of 100.

Alternate Senators

Each Electoral Unit shall have two Alternates. Electoral Units with more than 100 qualified faculty members shall choose one additional Alternate for each 66 faculty members over 100.

C. Nominations

Candidates for membership on the Faculty Senate may be nominated by any qualified faculty member of their Electoral Unit, including themselves. Qualified faculty members are eligible for nomination only within the Electoral Unit with which they are affiliated.

D. Eligibility to Vote

All qualified faculty members are eligible to vote for Senators and Alternates. Faculty members shall vote only in the primary Electoral Unit with which they are affiliated. (Paragraph amended May 2017)

E. Elections

The Governance Committee shall establish the rules and procedures for all regular elections according to sections of this Article governing Electoral Units, Representation, Nomination, Eligibility to Vote and Terms of Office.

Regular elections to the Faculty Senate shall be conducted during the months of August and September, with terms of office to begin at the Faculty Senate meeting in October.

Candidates receiving the greatest number of votes shall become the Senators for their Electoral Unit. Candidates with the next highest numbers of votes shall become Alternate Senators as determined by the formula in Article III.B. The Governance Committee shall retain the results of the election so that Alternate Senators with the highest numbers of votes may replace resigning Senators and the slots of Alternate Senators are refilled. In the case of a tie, candidates shall come to an agreement among themselves; otherwise Senators of the representative Electoral Unit shall vote for one of the candidates. In the case that alternate senator slots are not filled, Electoral Unit leaders may recruit faculty to serve as alternate senators until the next scheduled election.

The Governance Committee, upon notification of the Faculty Senate of a vacancy in the Faculty Senate between regular elections, shall notify the appropriate Electoral Unit Committee who shall appoint a replacement to complete the unexpired term. (Paragraph amended May 2017)

F. Terms of Office

1. Senators

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Senators shall be elected to a two-year term and shall be eligible to serve a maximum of three consecutive terms. The terms of Senators from each unit shall be staggered: one-half shall be elected each year. Senators who cannot complete their terms shall submit a written resignation to the Secretary of the Faculty Senate at least one month before the date of resignation.

2. Alternate Senators

Alternate Senators shall be elected to a one-year term. When a Senator resigns from his or her office, the Alternate with the greatest number of votes from the prior election automatically advances to the ex-Senator's position and completes the remainder of the ex-Senator's term of office. After succeeding the ex-Senator and serving the remainder of that term of office, the former Alternate may stand for election and ultimately serve for a period not exceeding a total of seven consecutive years. Alternate Senators who cannot complete their term of office shall submit a letter of resignation to the Secretary of the Faculty Senate at least one month before the date of resignation.

Article IV

Officers of the Faculty Senate: Election and Duties

The Officers of the Faculty Senate shall be the President, Vice President, and Secretary. Officers of the Senate are considered to be at-large Senators and do not stand for re-election to the Senate from their Electoral Unit in October even if their Senate term is scheduled to expire. If an Officer-Elect's term is not scheduled to expire when they become Officers at the October meeting, their Electoral Unit seat shall become vacant, and be filled during the regular election. (Paragraph amended May 2017)

A. Election of Officers

Election of Officers for the upcoming year (October – September) will be held at the July meeting. In May the Governance Committee shall call for nomination of Officers from the members of the Faculty Senate (Senators and Alternate Senators) after the election results become available. Any member of the Faculty Senate may nominate either another member of the Faculty Senate or himself or herself. All Senators are eligible to be slated regardless of time remaining on their current term unless a maximum of three terms has been reached. The Governance Committee will then draw up a slate of qualified individuals who agree to serve as President, Vice President, and Secretary. The Governance Committee shall oversee the voting process and report the results to the full Faculty Senate. (Paragraph amended May 2013)

B. President of the Faculty Senate

The President shall preside over the Faculty Senate; represent the Faculty Senate on appropriate university Committees; convene and preside at Executive Committee meetings; coordinate review of policy affecting the faculty; conduct the business of the Faculty Senate

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and fulfill other responsibilities incumbent on the leader of the Faculty Senate as deemed appropriate. At his or her discretion, the President may delegate these responsibilities.

C. Vice President of the Faculty Senate

The Vice President shall assume the role of the President in the latter's absence and perform other duties as requested by the President.

D. Secretary of the Faculty Senate

The Secretary shall take attendance, record and publish minutes of meetings; publicize scheduled meetings and agendas and items for vote; and update the Faculty Senate archives. Prior to a vote by the Faculty Senate, the Secretary shall establish the existence of a quorum and determine those empowered to vote. The Secretary shall discharge other duties assigned by the President.

Article V

Senators and Alternate Senators: Duties

A. Senators

Faculty Senators shall represent the views and interests of the faculty of their respective Electoral Units and the faculty-at-large. Senators shall attend at least two-thirds of monthly meetings of the Faculty Senate and serve on at least one committee of the Faculty Senate. A Senator who knows in advance that he/she will be unable to attend a meeting of the Faculty Senate is responsible for arranging for one of the Electoral Unit's Alternate Senators to attend in his/her absence.

B. Alternate Senators

Alternate Senators are encouraged to attend all meetings of the Faculty Senate. Alternate Senators are eligible to vote when attending in place of a Senator who is unable to attend a meeting. Alternate Senators are eligible and encouraged to serve as members of Faculty Senate Committees.

Article VI

Removal from Faculty Senate

Officers, Senators or Alternates may be removed from the Faculty Senate if they are unable to fulfill their duties as stipulated in the Bylaws.

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Article VII

Committees

Committees of the Faculty Senate have delegated authority to: consider, investigate and advise on those matters directly related to the operation and purposes of the Faculty Senate; and, to take action on behalf of the Faculty Senate commensurate with the committee's duties, or as specially authorized by the Faculty Senate. The members of the standing committees, *ad hoc* committees and subcommittees shall be members of the Faculty Senate or other qualified faculty. Committees shall be chaired by Senators or Alternate Senators.

A. Executive Committee

The Executive Committee shall be composed of one Senator from each of the seven Electoral Units, and the Officers of the Faculty Senate. The immediate Past President of the Faculty Senate and the Chairs of the Senate Standing Committeesshall serve as a non-voting, consultative member. The Executive Committee member from the respective Electoral Unit shall be selected by the Senators of that unit as stipulated in the Bylaws. The Officers-Elect (President-Elect, Vice President-Elect and Secretary-Elect) of the Faculty Senate shall be non-voting members of the Executive Committee from July through September. The Executive Committee may go into executive session when discussing sensitive issues as permitted by state law. (Paragraph amended May 2017)

B. Standing Committees

Standing committees of the Faculty Senate and their duties are described in the Bylaws of the Faculty Senate.

C. *Ad hoc* Committees

Ad hoc committees of the Faculty Senate are constituted for focused tasks.

Article VIII

Meetings

A. Faculty Senate

Meetings shall be held monthly at a regular time and designated place. Faculty Senate meetings are open to the faculty. The time and place of meetings (regular and special) shall be advertised to the faculty. Members of the faculty may request to be heard at Faculty Senate meetings, but have no vote or other legislative privilege. The President may call an executive session that is open only to Senators and Alternate Senators

B. Faculty

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Meetings of the faculty shall be called and presided over by the President of the Faculty Senate. Notice of faculty meetings shall be given at least 30 days in advance. Meetings shall be held at least once yearly. (Paragraph amended May 2017)

Article IX

Bylaws

Procedural guidelines governing the work of the Faculty Senate are documented in the Bylaws of the Faculty Senate.

Article X

Ratification of Constitution

The Constitution of the Faculty Senate shall be ratified by a two-thirds vote of all Senators and a two-thirds vote of all qualified faculty present at a special meeting of the faculty as called by the President of the Faculty Senate or two-thirds votes of all qualified faculty casting a vote in an electronically conducted vote. Upon ratification and henceforth, Articles of the Constitution shall not be changed. All changes to the Constitution shall be by Amendment, as described in Article XI. The Constitution shall be transmitted by the President of the Faculty Senate, through the appropriate administrative channels, to the Board of Trustees and shall take effect upon approval by the Board of Trustees. Prior to ratification of the Constitution or any Amendment, the Governance Committee will distribute pertinent documents to all qualified faculty members at least thirty days in advance of a regularly scheduled faculty Meeting or electronically conducted vote (VIII.B), will invite written comment, and offer an opportunity for discussion.

Article XI

Amendments to the Constitution and Revisions to the Bylaws

A. Constitution

This Constitution may be amended as follows:

A. Proposals for amendments to the Constitution may be made in writing to the President of the Faculty Senate. Any qualified faculty member may propose an amendment. The President of the Faculty Senate will have the item discussed at the Executive Committee. If a majority of the members of the Executive Committee agree, the item will be added to the agenda of the next regular meeting of the Faculty Senate.

B. The President shall give notice of the proposed amendments to all Senators at least thirty days prior to the vote via the usual dissemination routes (e.g., email).

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C. Faculty Senate approval of amendments will be by a vote of two-thirds of the Faculty Senators.

D. The President shall give notice of the proposed amendment to the faculty at least thirty days prior to the vote via the usual dissemination routes (e.g., email).

E. The proposed amendments shall be presented at a meeting of the faculty. They shall be adopted by a two-thirds vote of all qualified faculty present at this meeting. Alternatively, the amendment will be presented via email to the faculty, and an electronically conducted vote will be taken. Two-thirds vote of all qualified faculty casting a vote is required for adoption.

F. All amendments shall be transmitted by the President of the Faculty Senate, through the appropriate administrative channels, to the Board of Trustees and shall take effect upon approval by the Board of Trustees.

B. Bylaws

The Bylaws may be revised as follows:

A. Proposals for revisions to the Bylaws may be made in writing to the President of the Faculty Senate. Any qualified faculty member may propose a revision. The President of the Faculty Senate will have the item discussed at the Executive Committee. If a majority of the members of the Executive Committee agree, the item will be added to the agenda of the next regular meeting of the Faculty Senate.

B. The President shall give notice of the proposed revision to all Senators at least thirty days prior to the vote via the usual dissemination routes (e.g., email).

C. Faculty Senate approval of revisions will be by a vote of two-thirds of the Faculty Senators present at the meeting.

D. The President shall give notice of the proposed revisions to the faculty at least thirty days prior to the vote via the usual dissemination routes (e.g., email).

E. The proposed revisions shall be presented at a regular meeting of the faculty. They shall be adopted by majority vote of all qualified faculty present at this meeting. Alternatively, the amendment will be presented via email to the faculty, and an electronically conducted vote will be taken. Two-thirds vote of all qualified faculty casting a vote is required for adoption.

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Article XII

Review of the Constitution

A. There shall be a mandatory review of the Constitution five years after its adoption and at least every five years thereafter to occur on the decade and years ending in '5', for example 2009-2010, then 2014-2015.

B. This review shall be carried out by the Governance Committee at the direction of the Executive Committee. The review shall include recommendations of the Executive Committee and standing committee chairs.

3.02.02 Faculty Senate By-Laws

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Article I. Quorum

A. A quorum of the Faculty Senate necessary for the conduct of business shall be a simple majority of the voting members of the Faculty Senate except for changes to the Constitution and Bylaws as describe in Article XI of the Constitution.
B. A quorum of the Executive Committee necessary for the conduct of business on behalf of the Faculty Senate shall be a simple majority of the voting members of the Executive Committee.
C. Proxy votes shall not be allowed.

Article II. Conduct of Business

A. The President shall appoint a Parliamentarian. The Parliamentarian shall be a qualified faculty member but need not be a Senator. The Parliamentarian shall act as advisor to the President on matters of rules of procedure.
B. Business shall be conducted using the current edition of Robert's Rules of Order Newly Revised, except where otherwise specified in the Constitution and Bylaws.
C. Business of the Faculty Senate is normally conducted at regular meetings, special meetings, and in standing or *ad hoc* committees.
D. At the discretion of the President and with prior consent of the Faculty Senate, business of the Faculty Senate may also be conducted by distribution of information and ballots through mail, email or other transfer of information, provided that all other requirements of the Constitution of the Faculty Senate are met.
E. Action items requiring a vote by the Faculty Senate shall be distributed by the Secretary of the Faculty Senate at least 10 days before the meeting.

F. Action items requiring a vote by the faculty shall be distributed for comment at least 30 days prior to a regularly scheduled meeting or vote.

Article III. Standing Committees, *ad hoc* Committees, and Duties of Committee Members

A. Membership on Committees

Most work of the Faculty Senate is conducted by standing and *ad hoc* committees.

1. Membership of the Executive Committee is by election or by virtue of office and governed by Article VII.A. of the Constitution.
2. Each Senator shall serve on a minimum of one standing committee.
3. The Executive Committee appoints each committee chair from among Faculty Senators or from members of the Executive Committee.
4. Senators shall serve on standing committees for one-year terms and may serve multiple terms.
5. Members on *ad hoc* committees may serve until the assigned task is completed.

B. Duties of the Committee Chair

The Chair of each committee shall:

Apportion committee work efficiently and fairly among the committee members and, in consultation with the other committee members, decide whether the appointment of subcommittees is appropriate;

Seek advice from the faculty, from administrative and professional staff, and from students, if it is deemed beneficial to the committee's deliberations;

Keep minutes or other records of proceedings that are adequate for efficient continuation of work throughout and beyond the committee's period of service;

Submit an annual report to the Faculty Senate at the end of each academic year.

C. Executive Committee and Standing Committees

1. The Executive Committee shall:

a. Appoint Senators, Alternate Senators and qualified faculty to all committees of the Faculty Senate, except for the Executive Committee itself;
b. Appoint each committee chair from among Faculty Senators; members of the Executive Committee are eligible to serve as chair;
c. Ensure that committee assignments are distributed fairly among Electoral Units and academic ranks;
d. Initiate the formation and dismissal of *ad hoc* committees, as needed;

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e. Accept annual reports from each standing and *ad hoc* committee of the Faculty Senate;
f. Submit to the faculty an annual report at the end of each academic year;
g. Appoint Senators, Alternate Senators or qualified faculty to represent the Faculty Senate on university-wide committees;
h. Facilitate communication among the Administration of the university, the Faculty Senate, and the faculty by meeting with the President or the President's designee and the college Deans or their designees as necessary and by reporting to the faculty, as deemed appropriate;
i. Act on behalf of the Faculty Senate in emergency situations. In circumstances requiring immediate action, the committee may advise the Administration of the university on behalf of the Faculty Senate. It shall report its recommendations to the Faculty Senate at the next Senate meeting. (Paragraph amended May 2017)

2. The Governance Committee shall:

a. Govern the proceedings of the Senate;
b. Conduct Faculty Senate elections, certify eligibility of faculty for election, and maintain appropriate records of elections [See Amendment 1 and Amendment 2];
c. Review the Faculty Senate's governing documents and recommend changes to these documents as deemed appropriate;
d. Interpret the provisions of the Constitution and Bylaws;
e. Codify changes or amendments to the Constitution and Bylaws, as deemed necessary;
f. Call for nominations, establish slates, and conduct elections of officers of the Faculty Senate, as described in Article IV.A.;
g. Monitor and, as necessary, manage changes to the practices and procedures of the Faculty Senate, by revision to Bylaws as appropriate.

3. The Institutional Advancement Committee shall:

a. Monitor major trends in the life of the institution;
b. Track progress of action items discussed in the Senate throughout the administrative channels of the university;
c. Participate in strategic planning for the university;
d. Report back to the Faculty Senate where deemed appropriate;
e. Request that the Faculty Senate take a position or act on issues of general interest. Examples of actions: Collect information and report on major building activities, and on creation, development, or discontinuation of major units or departments.

4. The Faculty and Institutional Relationships Committee shall:

a. Consider issues pertaining to negotiations and procedures that, in a generic sense, apply to individual faculty. Examples of actions: Formulation of contracts, tenure/post-tenure review, promotions and rank, equity, sabbaticals, conflicts of interest, means of grievance.

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b. Accept and evaluate requests to change the Faculty Handbook.

5. The Communication Committee shall:

a. Collaborate with other standing committees to inform faculty of issues;
b. Inform the faculty about the work of the Senate through organized activities. Examples of actions: the organization of targeted workshops or retreats addressing themes such as faculty mentoring, tenure, interpretation of contracts, and sabbaticals.
c. Maintain the Faculty Senate web site and ensure that Senate activities are published in university publications.

6. The Electoral Unit Committees shall:

a. Consist of all elected Senators and Alternates from the particular Electoral Unit.
b. Elect one representative to serve as a member of the Executive Committee for a one-year term. This election occurs immediately after the results of the Senate election are known. This name is submitted to the Governance Committee;
c. Facilitate communication among the Faculty Senate and the dean and faculty of the Electoral Unit;
d. Receive requests for Senate action from faculty of their respective units and decides whether the Faculty Senate should be involved in such action. If not, the Committee directly responds to the request.

D. *Ad hoc* Committees

a. *Ad hoc* committees are composed of Senators, Alternates and qualified faculty for a focused task.
b. Upon completion of the task, the chair presents a report to the Faculty Senate.

Article IV. Procedure for Removal from Senate

A. Any Officer, Senator or Alternate may resign his or her duties at any time by sending a letter to the Executive Committee; see Articles III.F.1 and III.F.2 of the Constitution.
B. If the Senators of an Electoral Unit determine that one of their Senators or Alternates is ineffective, they shall contact that Senator. If no resolution is reached, the parties may take the case to the Executive Committee for deliberation and decision. These proceedings shall be confidential.
C. A Senator or Alternate can be removed for cause from office by a two-thirds majority vote of the Electoral Unit Committee and the Executive Committee.

Article VI. Revisions to Bylaws

The Bylaws shall be reviewed at least once every two years and revisions to the Bylaws are governed by Article XI.B of the Constitution.

3.03 University-Wide Committees

In addition to special committees as from time to time may be appointed or elected, there shall be standing chartered committees. The most current list is presented at

https://web.musc.edu/about/leadership/councils

All university-wide committees have faculty representation.

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4. FACULTY RANKS AND STATUS

4.01 Regular Faculty Ranks

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Sep 2015	Jul 2016		Oct 2016		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The following faculty ranks, as generally described below, are used throughout MUSC. Refer to individual college/department guidelines for specific criteria regarding appointment or promotion to any of these faculty ranks. With regard to University affairs, the voting faculty shall be those individuals holding an academic appointment at MUSC with regular faculty rank of Instructor and above, regardless of the percentage of FTE of the faculty appointment.

4.01.01 Instructor

This rank usually requires training beyond the baccalaureate degree. Demonstrated technical proficiency and experience may serve in lieu of formal training. The ability to contribute to the University's teaching programs is required.

4.01.02 Assistant Professor

This rank usually requires that a faculty member holds the appropriate terminal degree and possesses strong potential for development as a teacher, scholar, and researcher. An Assistant Professorship may be awarded in the absence of a terminal degree to individuals who have made significant teaching, research, or service contributions and who have shown evidence of academic potential.

4.01.03 Associate Professor

This rank usually requires the appropriate terminal degree and exemplary service as an Assistant Professor for at least three (3) years at this university or equivalent service elsewhere. Individuals achieving this rank should have demonstrated teaching effectiveness, should have made significant contributions in the areas of research/scholarly activity and service, and should show promise of continued intellectual growth.

4.01.04 Professor

This is the highest academic rank at the University and usually requires an appropriate doctoral degree. For appointment at or promotion to the rank of Professor, an individual normally will have served at the rank of Associate Professor for at least four (4) years and will have demonstrated excellence in the three areas of academic pursuit: teaching, research/scholarly activity and service. In addition, the individual should have an academic reputation extending beyond the University.

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4.02 Special Faculty Ranks

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Sep 2015	Jul 2016		Oct 2016		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Faculty holding special appointments do not have voting privileges.

4.02.01 Assistant

This rank usually requires a bachelor's degree and the ability to participate in teaching, research, and/or clinical service.

4.02.02 Associate

This rank usually requires at least a non-terminal master's degree or comparable training and experience in an appropriate area.

4.03 Modifiers to Faculty Ranks

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Sep2015	Jul 2016		Oct 2016		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	
Sep 2018	Oct 2018	Oct 2018	Not required		

The following modifiers may be made to either Regular faculty ranks (4.01) or Special faculty ranks (4.02). These modifiers shall be assigned according to **5.02.02 Procedures for Appointment.**

4.03.01 Visiting

This modified rank applies to faculty whose appointment to the faculty is for a limited time and whose responsibilities are important in the regular programs of MUSC.

4.03.02 Adjunct

This modified rank applies to faculty whose responsibilities are important though not extensive in the regular programs of MUSC, whose appointment is annual or continuous, and whose activities do not ordinarily involve direct patient contact or teaching in clinical courses.

4.03.03 Affiliate

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This modified rank applies to faculty who provide a valuable service to the MUSC mission; are appropriately qualified for the service s/he provides; qualifications and contributions are vetted by the committee that approves the college or unit's promotion applications, then approved by the Dean and the by the Board of Trustees if the appointment is at the Associate or Professor rank; and the individual must receive no state compensation from the college or unit that issues the Affiliate faculty appointment.

With continued and extensive service, Affiliate faculty are eligible for consideration for promotion in rank.

4.03.03 Clinical

This modified rank applies to faculty whose responsibilities are important though usually not extensive in the regular programs of MUSC, whose appointment is annual or continuous, and whose activities ordinarily involve direct patient contact or teaching in clinical courses.

4.03.04 Research

This modified rank applies to faculty whose responsibilities are important to the University and who has few or no job obligations other than doing research, often as a member of a research team.

Faculty with Regular faculty ranks modified by Clinical or Research may participate in faculty governance and have full voting privileges regarding University affairs. Faculty with Regular faculty ranks modified by Visiting or Adjunct and all faculty with Special faculty rank, regardless of modifier, do not have University voting privileges. Participation in college, department, and division governance will be determined by individual colleges.

4.04 Medical University Hospital Authority (MUHA)*

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

*NOTE: For clarification of subsequent narrative, the "MUHA" is referred to when describing the legal organization and/or governance of clinical care. When describing the clinical entity itself, it will be called the "MUSC HEALTH".

Individuals whose primary responsibility rests in one of the components of MUHA may hold a faculty appointment at a specified rank in a designated college, thereby recognizing participation in its educational programs.

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4.05 South Carolina Area Health Education Consortium (SC AHEC)

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

MUSC recognizes the valuable contributions of health care professionals employed by the educational programs at AHEC-affiliated institutions and volunteer professionals not employed by AHEC-affiliated institutions. Both categories of professionals are eligible to apply for MUSC appointments. The employed AHEC professionals have "MUSC AHEC" preceding their faculty rank; volunteer professionals have "MUSC AHEC Clinical" preceding their faculty rank. All MUSC AHEC appointments are without tenure and the SC AHEC Appointments and Promotions Committee coordinates this process with the MUSC Deans' Offices.

4.06 Honorary University Status

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The Board may appoint distinguished academicians to special university-wide rank.

4.06.01 Emeritus

Definition: Emeritus is an honorary title for a faculty member retiring from active university service. This rank recognizes distinguished service to the institution. It is conferred upon a faculty member when he/she retires by the Executive Vice President for Academic Affairs and Provost upon the recommendation of the department Chair and Dean of the respective college, following approval from the Board.

Eligibility: Emeritus status is generally reserved for regular, full-time faculty who are retiring at the rank Professor or Associate Professor and such individuals are designated as Emeritus Professor. An individual retiring at a lower rank may be granted the status of Emeritus at that rank based on the length and quality of his/her service to the institution. An administrator retiring with the rank of the Dean or above may be designated as Dean Emeritus, etc.

Procedure: The retiring faculty member may initiate the process for obtaining Emeritus status, through a formal request to their department Chair. The department Chair on behalf

of the retiring faculty member may also initiate this process. The Chair will make a written recommendation to the Dean of the college with documentation of the faculty member's service, usually his/her *curriculum vitae*. If the Dean concurs, the Dean forwards the recommendation to the Executive Vice President for Academic Affairs and Provost. If the Executive Vice President for Academic Affairs and Provost concurs, the Executive Vice President for Academic Affairs and Provost seeks approval from the Board. If approved, the Executive Vice President for Academic Affairs and Provost shall notify the faculty member in writing of the award of Emeritus Faculty status. If the retiring faculty member is a department Chair, the Dean initiates the request. For administrative titles at the level of Dean or above, the next highest administrator initiates the recommendation.

Benefits: Emeritus status is conferred on the faculty member for life, subject to the same policies for termination as apply for an active tenured faculty member. The following university benefits may be made available to all present and future emeritus faculty to include at a minimum:

- MUSC ID badge reflecting Emeritus status
- Continued Access to the university library and certain computer facilities such as email and approved cloud services access
- Eligibility for continued membership at the Wellness Center at the regular faculty rates
- Maintenance on a mailing list to receive university related news, announcement and invitations to events as appropriate.

Other benefits may be negotiable with the college/department. All benefits are subject to administrative review and the availability of resources.

4.06.02 Distinguished University Professor

Definition: The title of Distinguished University Professor is an honorary title given to a senior level faculty member who has had a distinguished academic career in teaching, service or research. It is conferred in writing by the Executive Vice President for Academic Affairs and Provost upon the recommendation of the department Chair and the Dean of the college, following approval of the Board. Upon retirement, the faculty member may use the title of Distinguished University Professor Emeritus.

Eligibility: Distinguished University Professor status is generally reserved for regular, full-time senior or retiring faculty at the rank of Professor. This high honor is reserved for those faculty members who have made outstanding contributions to their professions and have achieved national and/or international recognition for their accomplishments.

Procedure: Consideration of a faculty member for the title of Distinguished University Professor within the colleges will comply with the college level process for appointment and promotion. If the Dean approves the request within the college, the Dean forwards the recommendation to the Executive Vice President for Academic Affairs and Provost with documentation substantiating the request. If the Executive Vice President for Academic Affairs and Provost concurs, the Executive Vice President for Academic Affairs and Provost

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seeks approval from the Board. If approved, the Executive Vice President for Academic Affairs and Provost shall notify the faculty member in writing of the award of Distinguished University Professor. If the candidate is a department Chair, the Dean initiates the request with consideration by the college Appointment, Promotion, and Tenure committee.

Benefits: Status as a Distinguished University Professor is conferred on the faculty member for life, subject to the same policies for termination as apply for an active tenured faculty member. The Distinguished University Professor will automatically be eligible for all the benefits conferred upon the Emeritus faculty, if he/she is retiring from active service.

4.07 Faculty Appointment to More than One Unit

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The primary appointment of a faculty member holding joint/dual appointments is confirmed by the Executive Vice President for Academic Affairs and Provost. If a faculty member resigns his primary appointment or if his primary appointment is otherwise terminated, all dual and/or joint appointments in other departments or colleges are terminated the date the primary appointment is terminated. If a change of status is to be requested by the chair of the department in which the dual or joint appointment rests, such a request is submitted as a primary faculty appointment through the appropriate channels.

The following terms are descriptive of appointments in more than one unit of MUSC, or between MUSC and some other institution. These terms may be used with all of the above modifiers and ranks as appropriate.

4.07.01 Joint

A faculty member who holds a coordinated appointment in two or more colleges of MUSC or between MUSC and some other institution of higher learning holds a joint appointment.

4.07.02 Dual

A faculty member who holds an appointment between or among two or more departments within the same college holds a dual appointment.

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5. FACULTY APPOINTMENT, PROMOTION, TENURE AND EVALUATION

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Each college shall develop and publish in one document all appointment, promotion, and tenure guidelines or criteria, and establish a formal review of this document every three years. Each document should be explicit and the process clearly defined with input from the faculty. Each college shall establish appropriate procedures for all faculty appointments and promotions including those on tenure and non-tenure tracks. Faculty may switch between tenure and non-tenure tracks one time with approval by the dean of the college. Faculty members on the tenure track will be afforded protected time for academic pursuits.

Current links to College-specific Appointment, Promotion, and Tenure Polices can be found below:

College of Dental Medicine:

https://education.musc.edu/colleges/dental/about/resources/development

College of Health Professions:

http://academicdepartments.musc.edu/chp/academic_faculty-affairs/index.htm

College of Medicine:

https://horseshoe.musc.edu/university/colleges/com/musc-appointments-promotion-and-tenure-information

College of Nursing:

https://portal.musc.edu/nursing/CON%20Intranet/Resources/Faculty%20Handbook/Section%20V.pdf

College of Pharmacy:

http://academicdepartments.musc.edu/faculty_senate/essential_docs/promotion/pharm.html

College of Graduate Studies:

http://academicdepartments.musc.edu/grad/faculty_resources/grad_fac_app_info.htm

Academic Affairs Faculty:

https://education.musc.edu/colleges/aaf/policies

5.01 College/Department Faculty Appointment, Promotion and Tenure Committee

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Purpose:

Each college and general faculty unit will have an Appointment, Promotion and Tenure (APT) Committee. In addition to reviewing initial appointments, this committee shall evaluate faculty seeking promotion, tenure and review of tenured faculty. Colleges may choose to have a subcommittee of the APT that will exclusively evaluate initial tenure and review of tenured faculty. Any subcommittee must follow the guidelines for composition. The college APT committee will be advisory to the Dean.

Composition:

The Dean may determine the composition of the committee by either appointment or election, as long as the composition of the committee meets the following guidelines. The term of membership should be three years in length for both elected and appointed members, and may be renewed once. One-third of the committee shall be appointed or elected each year.

If the college has multiple tracks (educator/clinician, educator/researcher) faculty representatives from each track should be represented on the committee.

Administrators who serve in a supervisory role to faculty members being evaluated for promotion/tenure (e.g., deans, department chairs), and thus have other avenues for input into the promotion/tenure process, shall be excluded from the college APT committee. Division Directors and program directors who have already had input into an individual's evaluation should be excluded from deliberation and voting on that individual if they are on the committee.

The committee should consist of a minimum number of four. There shall be no maximum number.

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Only faculty at or above the rank, for which the individual is being considered, may vote on decisions involving promotion.

Only tenured faculty may vote on decisions involving individuals seeking tenure, or on review of tenured faculty.

If there are insufficient numbers of tenured faculty available to meet the above guidelines, non-tenured faculty may serve in their place, at the discretion of the Dean.

5.02 Faculty Appointment

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

5.02.01 Criteria for Appointment

Each college, through its Appointment, Promotion, and Tenure Committee, shall develop and publish a set of criteria which has been approved by the Executive Vice President for Academic Affairs and Provost through appropriate channels, and which will be used in the appointment of new faculty members. Such criteria should reflect the specific missions of the individual colleges and should be formulated to promote faculty excellence within the institution as a whole.

5.02.02 Procedures for Appointment

Appointments to the faculty ordinarily are initiated by the department chair. Academic appointments at the level of department chairman or higher usually are initiated by the administrative officer of the next higher rank.

The department chair shall consult with the departmental faculty of equal or superior rank to the prospective appointee or with the departmental Appointment, Promotion, and Tenure Committee before nominations are forwarded to the dean.

Upon approval by the dean, requests for appointment shall be forwarded to the Executive Vice President for Academic Affairs and Provost for approval. If departmental affiliation within a college is not involved, the requests shall be initiated by the appropriate dean and addressed to the Executive Vice President for Academic Affairs and Provost. If collegial affiliation is not involved, the requests shall be initiated by the Executive Vice President for Academic Affairs and Provost and addressed to the President. Upon such approval, recommendations for appointment shall be forwarded to the President.

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Appointments to the rank of Assistant Professor without tenure and below shall be made by the President. On the recommendation of the President, appointments to any rank with tenure, and all appointments to the rank of Associate Professor or Professor shall be made by the Board.

When a faculty member holding a modified rank or special appointment is considered for a change to a regular non-modified rank, the appointment shall follow the established procedures for initial appointment.

5.02.03 Term of Appointment

Appointment of faculty members with respect to term is of three types:

- A twelve (12) month appointment
- A nine (9) month appointment
- Appointment for other specified periods of time

Appointments are made on an annual basis: Twelve (12) month appointments usually begin July 1st. Appointments for time periods other than twelve (12) months span the academic year of the college of primary responsibility. The initial letter of appointment and/or contract and subsequent written notification of reappointment specifying the salary, rank, term of appointment, and tenure status, is given by the department chairman or other responsible administrative officer with the approval of the Executive Vice President for Academic Affairs and Provost.

Term of Appointment for Non-Tenured Faculty:

Any change in term of appointment for non-tenured faculty must be based upon documented evidence of financial exigencies or impending financial exigencies or of need for program redirection to insure the viability of a department or college. Efforts to make suitable reassignments of affected personnel will be made by the responsible administrative officers should the faculty desire to retain his or her original term of appointment.

The recommendation and rationale for faculty term of appointment changes must be written by the Dean or responsible administrative officer and submitted to the Executive Vice President for Academic Affairs and Provost for approval. Following approval by the Executive Vice President for Academic Affairs and Provost, written notice of the intention to change the term of appointment of a non-tenured faculty member shall be given, to the extent that appropriated funds are available and legislation permits, as follows:

(1) At least three [3] months prior to the expiration of the contract for faculty under his or her initial faculty appointment.
(2) At least six [6] months prior to the expiration of the contract for faculty appointed under a second-year contract.
(3) At least one [1] year prior to the expiration of the contract for faculty under a third [3rd] year or subsequent-year contract.

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5.03 Faculty Promotion

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Promotion both recognizes achievement and acknowledges that the individual is capable of greater accomplishments and responsibilities. The policy of the university is to make promotions strictly on merit.

5.03.01 Criteria for Promotion

Each college, through its Appointment, Promotion and Tenure Committee, shall develop, publish, and distribute to its faculty a set of criteria which have been approved by the President through appropriate channels, and which shall be used in the consideration of promotion to the various ranks. Such criteria should reflect the specific missions of the individual colleges and should be formulated to promote faculty excellence within the institution as a whole.

5.03.02 Procedures for Promotion

Recommendations for promotion of a faculty member are submitted to the dean by the department chairman after consultation: 1) with those faculty members of the department or administrative unit who are at or above the academic level to which the faculty member is seeking promotion; and/or 2) with the department or college Appointment, Promotion and Tenure Committee. In the case of promotion for department chairs or deans, the next higher administrator shall compile and forward the recommendations.

The faculty member being considered for promotion will be notified in writing by the department chair or other appropriate administrative officer of the schedule for the promotion review and will be given the opportunity to submit evidence relevant to the evaluation of his/her performance and future promise.

If the recommendation for promotion is disapproved, the faculty member shall be notified of the disapproval and the reason for it prior to the promotion deadlines.

Recommendations for promotion are considered by the dean of the appropriate college following the recommendation of his/her committee. Recommendations concerning administrative officers who hold faculty rank are submitted by the next higher administrative officer.

The dean makes formal recommendations and prepares a consolidated report for the Executive Vice President for Academic Affairs and Provost, who makes formal

recommendations to the President. The President reviews the recommendations submitted by the Executive Vice President for Academic Affairs and Provost, renders decisions, and, when required, submits recommendations to the Board.

The dean is responsible for notifying the faculty member in writing of any action taken in regard to promotion by the Executive Vice President for Academic Affairs and Provost or the President, and where applicable, also by the MUSC Board. The department chair notifies the faculty member in writing regarding salary for the forthcoming fiscal year.

Promotions are approved by the Board of Trustees and made effective on either January 1 or July 1 each year.

5.04 Faculty Tenure

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Tenure shall be the assurance of continuous appointment to a particular faculty rank, with continuation of salary commensurate with the rank, as long as duties are performed in accordance with accepted standards, subject to termination for cause, upon retirement, on account of financial exigency, or the change or abolition of institutional programs. Tenure rests in the college or department of primary appointment only. The initial letter of appointment and/or contract and annual renewals shall specify status with regard to tenure.

The following full-time faculty are not eligible for tenure: (a) faculty holding limited term appointments and (b) faculty holding modified ranks or special appointments as designated in Sections 4.02, 4.03, 4.04, and 4.05.

The tenure of a faculty member who also holds an administrative position, such as dean or department chair, extends only to the faculty position s/he holds conjointly with such an administrative position.

The assurance of continuation of salary shall apply to compensation based on academic rank, as defined in the annual contract (See Section 5.10). It shall not apply to additional compensation including, but not limited to, clinical practice income, consultation fees, administrative supplements, and special payments.

5.04.01 Criteria for Tenure

The faculty member must demonstrate competence and promise of long-term usefulness to the missions and programs of the university to be considered for tenure.

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Each college, through its Appointment, Promotion, and Tenure Committee shall develop a set of criteria to be used in the consideration of granting tenure and which shall have received the approval, through appropriate channels, of the Board. Each committee also shall publish and distribute these criteria to its faculty. Such criteria should reflect the specific missions of the individual colleges and should be formulated to promote faculty excellence within the institution as a whole.

5.04.02 Procedures for Granting Tenure

(1) The department chair or her/his designee initiates and forwards a recommendation to the dean after consultation with the departmental Appointment, Promotion and Tenure Committee and, where appropriate, with students, faculty outside the department, and professional colleagues. After consideration, the college Appointment, Promotion and Tenure Committee submits its recommendation to the dean.
(2) The dean reviews recommendations and forwards approved recommendations to the Executive Vice President for Academic Affairs and Provost, and through him/her to the university Tenure Committee. The recommendations of the University Tenure Committee are reviewed by the Executive Vice President for Academic Affairs and Provost and approved recommendations are then forwarded to the President and the Board for final action.
(3) If the recommendation for tenure is disapproved, the faculty member shall be notified of the disapproval and the reason for it prior to the tenure deadlines.
(4) Tenure ordinarily becomes effective once a year on January 1.

5.05 Post Tenure Review

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Jul 2017			Aug 2017		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

At every stage of a faculty member's career, the division Director and/or department Chair will review the faculty member's performance through the annual review process and reviews for promotion and tenure. Post-tenure review serves to evaluate a tenured faculty member's professional ongoing contributions and value to the university. During these reviews, efforts should be made to identify realistic long-range goals for career enhancement, evaluate the faculty member's strengths and weaknesses in performance, and, through appropriate advice and action, provide opportunities to correct any weaknesses to enable the faculty member to realize her/his full professional development. The review should be used to ensure that all tenured faculty members: (a) continue to perform at a level to achieve their long and short range career goals and (b) serve the needs of the students and the institution.

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All tenured faculty members are subject to post-tenure review. There are two mechanisms of post-tenure review: a streamlined post-tenure review (described in 5.05, subsection 2 below) and a full post-tenure review (described in 5.05, subsection 4 below). A streamlined post-tenure review occurs every six years for those who have been evaluated as adequate or superior in each of the six years. The full post-tenure review occurs either every six years if a faculty member has received an inadequate evaluation during the prior six years, or is triggered if a faculty member's performance is deemed to be inadequate in two consecutive years. In either mechanism, the post-tenure review is reliant on the annual review.

1) **Each tenured faculty member undergoes annual reviews.** The faculty member's annual review is integral in determining performance. The department Chair/division Director will use the three-point scale for annual reviews (below, meets or exceeds expectations). If a faculty member is rated as below expectations in a majority of applicable performance categories, they will receive a "below expectations" overall evaluation. Each year, the faculty member must be made aware of specific requirements to attain an adequate annual review so that he or she is given the chance to meet these specific requirements.

2) **If the tenured faculty member receives no ratings of below, they undergo streamlined post-tenure review every sixth year.** For a tenured faculty member who has received overall ratings of meets or exceeds expectations in all annual performance evaluations in the preceding six years, the department Chair/division Director will send a letter to the Appointment, Promotions and Tenure (APT) Committee of the faculty member's college stating that the faculty member satisfies the requirements of a favorable post-tenure review. A copy of this letter will be sent to the faculty member under review and the college Dean, and placed in the faculty member's personnel file. The faculty then starts a new six-year cycle.

3) **If the faculty member receives an overall rating of below in a majority of applicable performance categories, they undergo a full post-tenure review**. There are two mechanisms that lead to a full post-tenure review: (i) If a faculty member has received a below in a majority of applicable performance categories evaluation during the six-year cycle, the faculty member is subject to full post-tenure review at the end of that cycle (see (b) below), or (ii) If the faculty is rated as below in a majority of applicable performance categories in two consecutive years, a full post-tenure review is triggered, which starts after the second year of the performance-improvement plan (see (c) below).

    a) **Upon the first rating of below in a majority of applicable performance categories in an annual review, a Performance-Improvement Plan (PIP) is implemented.** If a tenured faculty member is rated below in a majority of applicable performance categories on an annual evaluation, the department Chair/division Director shall meet with the faculty member to outline the steps of improvement to be taken to correct the deficiencies, to establish criteria for the satisfaction of those deficiencies and to indicate what resources are available to support the plan, as appropriate. This Performance-Improvement Plan (PIP) should be approved by the college Dean, reported to the Executive Vice President for Academic Affairs and Provost, and described in the associated

annual contract. The faculty member will be given two years beyond the date of the contract to execute the plan successfully. The goal shall be restoration of adequate performance. A written summary of the meeting shall be prepared for the faculty member by the department Chair/division Director and copied to the college Dean, the college APT committee, and the Executive Vice President for Academic Affairs and Provost.

b) **Upon a rating of meets or exceeds in the year after a rating of below on annual review, the faculty member will undergo a full post-tenure review at the end of the six-year period.** The department Chair/division Director shall send a letter to the college Dean, the college APT Committee, and the Executive Vice President for Academic Affairs and Provost stating that the faculty member has received an overall rating of meets or exceeds on their subsequent annual performance evaluation, noting that deficiencies have been corrected. A copy of this letter will be sent to the faculty member under review and placed in the faculty member's personnel file. The faculty member then continues their cycle for post-tenure review, but at the end of the six years will be subject to a full post-tenure review, as described in Number 4 of this section.

c) **Upon the second rating of below** in a majority of applicable performance categories **in an annual review, a full post-tenure review is triggered.** If the department Chair/division Director finds that the tenured faculty member fails to make substantial progress toward meeting the performance goals that had been set in the performance-improvement plan and receives a second below evaluation on the subsequent annual evaluation, the faculty member begins year 2 of the performance-improvement plan. Two consecutive inadequate evaluations is also the trigger for a full post-tenure review to be conducted at the end of year 2 of the performance-improvement plan, which is described in Number 4 of this section. If, however, the performance of the faculty has improved significantly at the end of year 2 of the performance-improvement plan, the department Chair/division Director may recommend that the full post-tenure review not occur until the end of the six-year period.

d) The process leading to full post-tenure review after two inadequate evaluations is illustrated in Figure 1.

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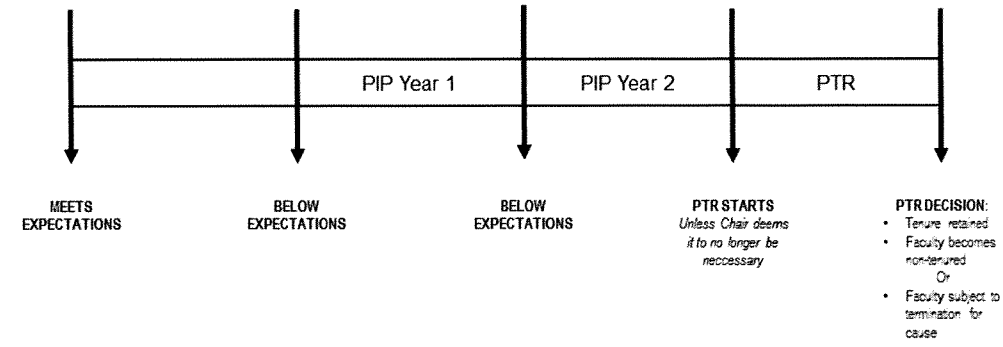

Figure 1: The full post-tenure process as triggered by two consecutive below expectations evaluations

4) Full Post-Tenure Review: The full post-tenure review is initiated by the department Chair/division Director or supervising administrator. The department Chair/division Director submits a letter to the college APT Committee detailing the deficiencies of the faculty member under review with corroborating documentation. The department Chair/division Director must also notify the college Dean and the Executive Vice President for Academic Affairs and Provost. A copy of the letter will also be sent to the faculty member under review and placed in the faculty member's personnel file.

The charge of the college APT Committee is to recommend for or against the removal of tenure. The college APT Committee will review the faculty member's performance based upon written standards and criteria that are developed by the individual college APT Committees. The criteria should reflect the specific missions of the individual colleges and the university. Each college APT Committee shall publish and distribute these criteria to its faculty. The basic standard for evaluation shall be whether the faculty member under review discharges the duties appropriately associated with her or his position as documented by annual faculty contracts and the initial offer letter for the position, if applicable. The review must also be flexible enough to acknowledge different expectations in different disciplines and changing expectations at different stages of faculty careers. In reviewing a faculty member's performance, the college APT Committee will recognize not only the diverse talents, activities and accomplishments of faculty within that college, but also that individual faculty are expected, in consultation with their department Chair/division Director, to focus their efforts in selected areas of endeavor. The college APT Committee will also verify that an adequate environment was provided by the department Chair/division Director to support the faculty member in performance of these directives. The college APT Committee must include a tenured MUSC faculty member from outside of the college to review the faculty member's performance. The department Chair/division Director may suggest outside reviewers to the APT Committee.

(a) For its deliberations, the college APT Committee will utilize the following:

(i) A full report on the faculty member will be prepared by the department Chair/division Director, consisting of copies of the previous six years' annual performance evaluations conducted by the department Chair/division Director using the college/department/division specific faculty performance evaluation forms, and when applicable, written summaries that document deficiencies and plan(s) of remediation, plus the Chair's letter outlining efforts to remedy the deficiencies, supplemented by any other documents and information that the department Chair/division Director wishes to submit.

(ii) The faculty member under review shall be given the opportunity to appear before the committee and/or submit any documents that he or she wishes to be considered. During the time in which the post-tenure review process is being conducted, the faculty member can submit new materials relevant to the consideration as they become available. Examples of types of documents that a faculty member may wish to submit include: evaluations of teaching performance, documentation related to service and clinical practice, evidence of research or scholarship and any other material regarding activities pertinent to the college's mission.

(iii) The college APT Committee may request the submission of further documentation in addition to that provided by the department Chair/division Director.

(b) After completing their review, the college APT Committee shall submit a written report to the department Chair/division Director. The report, which shall be a permanent part of the faculty member's personnel file, will contain:

(i) An evaluation of the faculty member's performance and progress, including the perceived strengths and weaknesses.

(ii) An analysis of the faculty member's potential for further professional development. If applicable, opportunities for development should be identified (*e.g.*, encouragement of research initiatives, potential mentorships in teaching and research, or appropriate professional development courses that could be taken).

(c) The college APT Committee shall forward the report to the college Dean with a clear recommendation for retention of tenure when the faculty member, in the Committee's judgment, is rated superior or adequate. A rating of inadequate by the college APT Committee shall be forwarded to the college Dean with a recommendation pertaining to tenure. The written report and recommendation of the APT committee shall be provided simultaneously to the faculty member under review and the Dean. The college Dean reviews the recommendation and if he or she determines the removal of tenure is warranted, forwards the recommendation to the Executive Vice President for Academic Affairs and Provost for review and action by the University Tenure Committee. The college Dean shall provide to the faculty member, department Chair/division Director and college APT Committee memoranda indicating her/his action.

(d) If the University APT Committee, after a full hearing of the case, supports the recommendation for removal of tenure, this recommendation will be forwarded to the

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Executive Vice President for Academic Affairs and Provost. The faculty member then has the option to file a Grievance and Appeal Procedure, as described in the *Faculty Handbook* (Section 8.02). The Executive Vice President for Academic Affairs and Provost will make the final determination and, if necessary, make a recommendation to the Board of Trustees for action.

If the Executive Vice President for Academic Affairs and Provost's decision and, if used, the Grievance and Appeal Procedure, results in the decision to remove the faculty member's tenure, there are two possible outcomes: the faculty will continue as a non-tenured faculty or the faculty member will be subject to termination for cause under Section 9.01 of the *Faculty Handbook*. In the event of termination for cause, the process of full post-tenure review will have fulfilled Section 9.02 of the *Faculty Handbook*.

Policies: The following policies are applicable to post-tenure review:

(a) The full post-tenure review process, as described above in 4), must be concluded within 12 months. Responsibility for adhering to this timetable rests with the Executive Vice President for Academic Affairs and Provost's office.

(b) The outcomes of all evaluations shall be confidential; that is, confined to the appropriate college or university persons or bodies and faculty member being evaluated, and shall be released only with the written consent of the faculty member.

(c) In accordance with the review process mandated by the *Faculty Handbook*, the above policy and standards and criteria developed to carry out this policy should be evaluated with respect to the effectiveness in supporting faculty development and redressing problems of faculty performance.

5.06 Faculty Evaluation

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The State of South Carolina requires that all state universities and colleges evaluate faculty performance. In order to comply with this requirement, MUSC has developed a faculty evaluation procedure which has been approved by the division of Human Resources of the State Budget and Control Board.

Each college of the university has an approved Performance Appraisal form (faculty evaluation). Consult with respective Dean's Office for copies of these forms. The form is completed annually for each member, and is kept in a permanent file under the purview of

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the dean or director. The faculty member has a right to full disclosure of the Performance Appraisal.

The faculty member is required to sign the appraisal, indicating s/he has read the evaluation form, but has the right to make written comments concerning agreement or disagreement with the evaluation.

College of Health Professions:

http://academicdepartments.musc.edu/chp/academic-faculty-affairs/faculty-fa/faculty_evaluation.htm

College of Dental Medicine:

https://education.musc.edu/colleges/dental/about/resources/development

College of Medicine:

http://academicdepartments.musc.edu/com/faculty/apt/forms/FacPerfEval.doc

College of Nursing:

https://horseshoe.musc.edu/university/colleges/college-of-nursing/faculty/resources/faculty-evaluation-and-process-forms

College of Pharmacy:

The MUSC COP Evaluation form is located inside of the Faculty Resources File within MUSC Box –COP

Academic Affairs Faculty:

http://colbert.library.musc.edu/dlsifac/

5.07 Faculty Salary Increases

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
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Salary increases for faculty members will be distributed as merit based increases. When funds are designated for faculty salary increases, the amount and the procedure for allocation of these funds will be communicated to the faculty.

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All funds will be distributed as merit increases, based on the approved Faculty Performance Evaluation Form, which is mentioned in Section 5.06 of the university *Faculty Handbook.*

5.08 Distribution of Faculty Activity

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The assignment of a faculty member's division of responsibilities between academic activities is initially specified in the letter of offer and initial contract. Review and, eventually, reevaluation of division of obligations is carried out as part of the annual evaluation, at which time the faculty member and supervisor mutually agree upon any changes in the balance of instruction/teaching, scholarly activity, administrative responsibilities, community services, and, when applicable, clinical services, in keeping with the mission of the Medical University. The faculty member and the supervisor sign the Performance Evaluation Form, on which the percent effort for various assignments/responsibilities is outlined in writing. Should an agreement not be reached, either the faculty member or Chair will proceed under policies detailed in Section 8 of the *Faculty Handbook.*

5.09 Faculty Record Review

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Faculty members have the right to review their personnel file upon written notification to their department chair and/or dean. Faculty members may make additional submissions and/or provide explanations of errors or omissions. Such additions shall become a part of the permanent file. Nothing herein shall grant the faculty member a right to purge or remove anything in their personnel file without prior written consent of their direct supervisor and the dean of the college.

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5.10 Universal Faculty Contract

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
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https://education.musc.edu/-/sm/education/faculty/faculty-senate/f/approved-faculty-contract.ashx?la=en

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6. FACULTY DEVELOPMENT

6.01 Sabbatical Leave

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

A faculty member holding the rank of Professor or Associate Professor who has rendered six or more years of satisfactory service to MUSC may be granted sabbatical leave in order to study or undertake further training. Sabbatical leave is for the primary purpose of enhancing the value of the professional status of the faculty member in further service to the Medical University. The period for sabbatical leave may be for up to one year. Salary support during this period will be at the rate of one month for each year of service to MUSC, up to a maximum of twelve months salary.

A sabbatical leave may be granted by the Board upon recommendation by the President, following approval by the department Chair, the Dean of the college concerned, and the Executive Vice President for Academic Affairs and Provost, and with the understanding that the faculty member will return to active service MUSC when such leave has ended.

During sabbatical leave, annual leave accrual is prorated according to the percentage of the MUSC salary paid to the faculty member (i.e., a faculty member receiving half-pay from the university while on sabbatical leave would accrue one-half of full annual leave entitlement. Upon return, it is incumbent upon a faculty member receiving partial pay while on sabbatical to request that his/her department submit a leave correction form to ensure that the full annual leave entitlement is reinstated.

In accord with the state Sick Leave Act, faculty members will not accrue sick leave while on sabbatical leave.

Benefits may continue during a sabbatical leave, but the faculty member MUST contact the Benefits Section of the Department of Human Resources Management for advice on what action is required to maintain current benefits. To prevent loss of benefits, it is essential that the faculty member contact Human Resources Management at least 60 days prior to beginning sabbatical leave.

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6.02 Upward Faculty Mobility Toward Advanced Degrees

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

PURPOSE: This policy is intended for the primary purpose of enhancing the value of the professional status of the faculty member in further service to MUSC. The university, therefore, upon prior approval of the dean of the college in which s/he holds primary appointment, offers the faculty member who does not possess a terminal degree in her/his field an opportunity to pursue a planned program for upward mobility toward an advanced degree.

ELIGIBILITY: Full-time faculty members with no modifiers to their ranks are eligible to apply for admission to an advanced degree program under this policy.

6.02.01 Academic Requirements

1) In any course of study pursued toward a degree, the faculty member shall meet the same requirements for the degree, as published in the University Bulletin, as any other student.
2) The student/faculty member will be required to meet the regularly scheduled class times in courses in which s/he is enrolled.
   a) Student laboratory assignments that can be accomplished outside of the faculty member's normal working time may be made an exception, if approved IN ADVANCE by the deans and department chairs concerned.
   b) If his/her duties and responsibilities as a faculty member conflict with his/her student class hours, his/her faculty responsibilities shall take precedence. This is to be determined by the deans involved.
3) The faculty member seeking an MUSC degree will be required to demonstrate his/her academic progress to a committee of qualified evaluators at least once each year by means of either a written and/or oral examination. The results of the evaluation will be submitted by this committee to the dean of the college in which the degree is being pursued and to the department chair, if appropriate. This dean shall file a copy of the report with the Executive Vice President for Academic Affairs and Provost.
4) Failure to perform in a satisfactory manner at any time shall be reported to the Executive Vice President for Academic Affairs and Provost by the dean involved.
5) No deviation from the approved plan of study will be permitted without a written request from the department chairs, the recommendation of the deans, and the approval of the Executive Vice President for Academic Affairs and Provost. Such approval for an amended study plan shall be filed in the student/faculty member's record in the office of the University Registrar.

6.02.02 Financial Considerations and Requirements as a Faculty Member

1) The faculty member who has been admitted as a student to a degree program in at the Medical University or elsewhere must abide by the following if s/he is to receive financial considerations by the university:
   a) promotion as a faculty member may be denied during the period of time the degree program is in progress.
   b) faculty salary increases other than "across the board" raises may be denied.
   c) obtaining of the degree in no way obligates MUSC to alter his/her initial faculty appointment, to promote him/her, or to significantly adjust his/her salary, although any or all of these may be a result.
   d) s/he shall agree, in writing, to continue his/her employment to MUSC for a period of not less than one year after receiving the degree.
2) The faculty member who agrees to the above financial terms may pursue his/her approved plan of study at the yearly average rate of 15% of his/her normal work time, with no reduction in salary.
3) If an accelerated plan of study is requested by the faculty member and is approved by the chair, deans, and the Executive Vice President for Academic Affairs and Provost, the faculty member must voluntarily reduce both her/his teaching responsibilities and her/his salary proportionately.
4) If the approved plan of study includes extensive bench research or clinical rotations during normal faculty working time, a proportionate salary reduction shall be required. If this is determined at the time the program is initially approved, the amount of salary reduction will be determined at that time.

6.02.03 Financial Requirements as a Student

1) While pursuing his/her approved plan of study, the student/faculty member will officially register for each course taken and pay the appropriate tuition and fees as set by the college in which s/he is enrolled. In the year in which the degree is to be conferred, the student/faculty member shall pay, in addition to the required tuition, the full fees required of all students.
2) If an accelerated plan, as described in Section 6.02.02 under "Financial Considerations and Requirements as a Faculty Member," is in effect, the student/faculty member must pay the appropriate tuition each semester.

6.02.04 Procedure for Faculty Member

1) The faculty member shall submit
   a) to the chair of his/her department and the dean of the college in which s/he holds primary faculty appointment, and if applicable
   b) to the dean of the college in which s/he proposes to pursue the advanced degree, a complete outline of the proposed curriculum, semester by semester. S/he shall also indicate all courses to be taken, the proposed research and/or clinical experience required, and the degree which is to be sought.
2) If the faculty member's proposal is disapproved at any step in the Administrative Procedure stated below, s/he will be so notified; this action shall be considered final.

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3) If the faculty member's proposal is approved, the Executive Vice President for Academic Affairs and Provost will notify him/her in writing and s/he may then proceed to apply for admission through the regularly prescribed admissions policy of the college in which s/he is seeking admission.
4) The application for admission shall have attached to it the following:
   a) outline of plan of study
   b) letter of approval from the Executive Vice President for Academic Affairs and Provost to pursue the degree as outlined
   c) required application fee.

6.02.05 Administrative Procedure

1) Upon receipt of a request with attachment thereto of a complete outline of proposed study as stated under "Procedure for Faculty Member" above, to pursue admission to a specific advanced degree program within a college of the Medical University, the dean(s) of the college(s) concerned in conjunction with the appropriate department chairs either approve or disapprove the request. If more than one dean is concerned (i.e., if the dean of the college of proposed study is different from the dean of the college in which the faculty member holds primary appointment), approval to apply for admission must be by both. Either one disapproving, the request shall be denied.
2) If the request is approved, the dean of the college in which the faculty member holds primary appointment shall write a letter to the Executive Vice President for Academic Affairs and Provost, with a copy to the dean of the college to whom the faculty member will submit his/her application, stating willingness for the faculty member to apply for admission as a student. The letter should include: (a) how all of the individual's duties, teaching responsibilities, and other commitments to his/her department would be met; (b) what financial considerations would apply as described in Section 6.02.02 under "Financial Considerations and Requirements as a Faculty Member," and (c) indication of approval of the plan of study.
3) In like manner, if the request is approved, the dean of the college of proposed student enrollment shall notify the Executive Vice President for Academic Affairs and Provost in writing of: (a) procedures for evaluation of the faculty member's progress as a student in accordance with his/her approved plan of study; and (b) the names of the faculty members assigned to evaluate the faculty/student's progress. Such progress will be evaluated in accordance with Subsections (3) and (4) under Section 6.02.01 "Academic Requirements."
4) The faculty member shall then be notified in writing by the Executive Vice President for Academic Affairs and Provost that her/his plan of study has been approved and that s/he may apply for admission through the regular admissions process of the college in which the advanced degree is to be sought.

Any time the above procedures or processes are not adhered to, the faculty member, if admitted to a course of study, may be removed from the college in which s/he is enrolled or may be required to reimburse MUSC for any financial losses suffered either as a result of being a student and/or a faculty member.

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6.03 Faculty Desiring to Obtain a Degree in Addition to Terminal Degree Already Held

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A faculty member holding a terminal degree in the area of his/her original appointment who wishes to obtain an additional degree offered at MUSC will be subject to the same policy, rules, regulations and requirements as a faculty member who seeks a terminal degree. Further, since such a program of study is not to be construed as a faculty member's service to MUSC, a proportionate reduction in salary may be necessary to meet his/her responsibility, unless otherwise approved by the dean of the college of his/her primary appointment.

6.04 Tuition Assistance

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

MUSC provides tuition and mandatory fees assistance to permanent employees (classified, faculty, and other unclassified employees) for up to four credit hours a semester as authorized by Section 59-111-15 of the 1976 South Carolina Code of Laws, as Amended (**http://www.scstatehouse.gov/code/t59c111.php**). Tuition and mandatory fees assistance will be provided by reimbursement of tuition cost after course completion, subject to availability of employing department funds. Permanent employees who are employed at least 30 hours per week are eligible to apply for tuition and mandatory fees assistance regardless of race, color, religion, sex, age, national origin, disability or veteran status. The tuition assistance program is only for MUSC employees to enroll in a credit-bearing course at MUSC or any other state institution (not including continuing education) on a space-available basis and with approvals of the course director or department chairperson.

Faculty Tuition Assistance Policy Links

University HR: Link to Tuition Assistance Request Form found within policy

https://horseshoe.musc.edu/~/media/files/hr-files/univ-files/policies/policy17.pdf?la=en

Hospital HR

https://horseshoe.musc.edu/~/media/files/hr-files/muha-files/policies/policy17tuitionassistance.pdf?la=en

6.05 Travel

MUSC, as an agency of the State of South Carolina, is subject to the travel guidelines set by the State Budget and Control Board: http://www.state.sc.us/cg/info/disbregs/travel.htm

6.06 International Travel Policy

Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Mar 2018	Apr 2018	May 2018	

http://globalhealth.musc.edu/blog/musc-international-travel-policy

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7. FACULTY DUTIES AND RESPONSIBILITIES

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

It is the duty of the faculty to create an environment that is conducive both to the education of skilled professionals and to the scholarly pursuits of the faculty. The university provides an environment for intellectual development, reasonable working space, and an appropriate amount of time for scholarly growth and achievement.

Subject to the approval of the Board, the faculty of each college has jurisdiction over all matters pertaining to the curriculum. The faculty has the responsibility for prescribing the curriculum, determining academic standards and teaching and examining accordingly. It has the responsibility for determining the entrance requirements, determining requirements for promotion and dismissal of students, determining the requirements for the graduation of students, recommending candidates for degrees and certificates, and enacting rules and regulations for the overall guidance of student programs.

The faculty shall serve an advisory function on the appointment, promotion or dismissal of faculty and administrators, on the distribution of funds and facilities for education, research and service; and on the acquisition of external support for research and other scholarly activities.

7.01 MUSC Code of Conduct

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
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https://web.musc.edu/about/compliance/conduct

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7.02 Academic Freedom

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

A member of the faculty is free to teach and to discuss in classes any aspect of a topic pertinent to the understanding of the subject matter of the course which is being taught; to act and to speak as a private citizen without institutional censorship or discipline. A member of the faculty is free to carry on research and disseminate the results.

7.03 Outside Activities

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Faculty members should not participate in outside activities that create a conflict of commitment with their contractual obligations to the Medical University. A faculty member may engage in outside activities, whether for compensation or not, on a limited basis, provided that such activities are in keeping with his/her professional practice agreement, competency, and development, and do not interfere with the performance of his/her assigned duties. Activities such as preparation and presentation of research results, presentation to professional groups, peer review activities, and service as members of professional or community societies are normally not considered outside activities, i.e., they are within the scope of work. Employment of faculty by other state agencies or institutions must be accomplished through the procedures established by the state; remuneration is limited by law.

Outside activities must be disclosed to the Institution annually as described in the MUSC/MUHA Conflict of Interest Policy. Additionally, outside activities must comply with the provisions of the MUSC/MUHA Conflict of Interest Policy and the MUSC/MUHA Industry Relations Policy. These policies appear in following sections via links to the MUSC Conflict of Interest Office. Questions regarding application of these policies can be directed to that office.

7.04 Political Activities

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Faculty members of the Medical University may undertake civic duties and participate in community political activities and, as a general rule, hold municipal or local political offices without interference from the Medical University. However, great care should be exercised in active political campaigning in state and federal elections. Campaigning for a major state or federal government office requires a leave of absence authorized by the President of the Medical University. Any faculty member elected to major state or federal government office either must obtain a leave of absence authorized by the President or resign from the faculty.

7.05 Conflict of Interest

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The faculty of the Medical University of South Carolina engages in a wide variety of external activities with public and private organizations. The Medical University endorses and subscribes to the principles of the joint statement of the American Council on Education and the American Association of University Professors, "On Preventing Conflicts of Interest in Government-Sponsored Research at Universities." With the acceptance of a full-time appointment to the faculty of the Medical University of South Carolina, the faculty makes a commitment to MUSC that such employment is full-time in the most inclusive sense. Outside obligations, financial interests, and activities in other areas are not to conflict with their commitment to the Medical University of South Carolina.

All faculty and administrative staff shall disclose any conflict of interests using the MUSC web based disclosure mechanism, see https://www.carc.musc.edu/coi. Such disclosure is made on an annual basis as defined by the MUSC/MUHA conflict of interest policy. Whenever a new conflict of interest arises or when a significant change occurs concerning an existing disclosure, a new disclosure form must be completed and submitted for review either in advance of the anticipated change in situation or within 30 days of the event

Infraction of the letter or spirit of this policy constitutes a serious offense, which shall be responded to with appropriate action ranging from private reprimands to termination at the discretion of the Executive Vice President for Academic Affairs and Provost.

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The following policy, governs employee financial conflicts of interest within MUSC, MUHA, and our affiliates. Various parts of the institution may have their own sub-policies, consistent with this general policy, but specific to their specific areas of activity. Clinical, research, and research start-up policies and charters appear on the Conflict of Interest website:

https://web.musc.edu/about/coi/coi-policies

7.05.01 Medical University of South Carolina and Medical University Hospital Authority: Conflict of Interest Policy

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
			Dec 2015		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

This policy:

- Articulates MUSC's annual disclosure requirements and the institution's responsibility to review, identify and manage potential employee conflicts of interest;
- References the SC State Ethics Law which makes it unlawful for public officials, public members, and public employees to use their position to obtain an economic interest or to have a financial interest in most any contract or purchase connected with MUSC/MUHA; and
- Fulfills MUSC's obligation as an institution that conducts research funded by the Public Health Service to have a written, enforced policy that complies with 42 CFR Part 50 Subpart F - "Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought" and 45 CFR Part 94 "Responsible Prospective Contractors" as well as all other relevant policies of federal funding and oversight agencies.

Persons covered by this policy:

This policy applies to all Trustees, Officers, Faculty, Administrators, and Staff, including all full-time, part-time, temporary, and contract Employees of Medical University of South Carolina ("MUSC") and Medical University Hospital Authority ("MUHA"). Affiliates (entities which derive their not for profit status from MUSC, such as University Medical Associates, the MUSC Foundation, and the MUSC Foundation for Research Development) shall as a condition of continued business with MUSC and MUHA adopt a policy substantially similar to this Policy, adapted to accommodate those affiliate employees who are not public employees.

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Preamble

1) Enhancing the public good through improved health initiatives and superior economic development is the foundation of many government policies. MUSC, as a contemporary, public research university, has a responsibility to actively participate and promote these initiatives even if conflicts of interest are more likely and many times unavoidable. Conflicts of interest, therefore, may arise from ordinary and appropriate activities as a part of assigned employment duties so the existence of a conflict should not imply wrongdoing. When conflicts of interest do arise, however, they must be recognized and disclosed, then eliminated or appropriately managed. The Board of Trustees for MUSC and MUHA has a duty to govern those State entities in a manner such that conflicts are appropriately reviewed and acted on to maintain public confidence in the integrity of our institutions.
2) This policy provides a framework for recognizing and managing employee conflicts of interest, and should minimize even the appearance of conflicts of interest. The primary goal of this policy is to prevent an employee's activities from adversely influencing MUSC or MUHA operations.
3) Particular departments and activities of MUSC or MUHA may have specific conflict of interest policies. It is intended, however, that this policy will apply to the entire MUSC enterprise, providing a framework for those specific additional policies to operate under, such that those specific policies will not supersede this policy unless approved by the Board of Trustees.
4) This policy references South Carolina Code (S.C. Code § 8-13-10 *et seq.*) (the "Ethics Law"), which makes it unlawful for public officials, public members, and public employees to use their position to obtain an economic interest or to have a financial interest in most any contract or purchase connected with MUSC/MUHA, unless certain exceptions apply. This policy is implemented in addition to all requirements of the Ethics Law and does not supersede it. The South Carolina Ethics Law is at www.scstatehouse.gov/code/t08c013.php
5) As MUSC conducts research funded by the Public Health Service and other federal agencies, it is required by federal law to maintain an appropriate written, enforced policy on conflict of interest that complies with 42 CFR Part 50 Subpart F – "Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought" (http://grants.nih.gov/grants/compliance/42_CFR_50_Subpart_F.htm) as well as all other relevant policies of federal funding and oversight agencies.

A. Statement of general policy

1) MUSC/MUHA policy is that its employees conduct the affairs of MUSC/MUHA in accordance with the highest legal, ethical and moral standards.
2) MUSC/MUHA policy is that employees of MUSC/MUHA shall disclose perceived and real conflicts of interest.
3) MUSC/MUHA policy is that employees shall not use their position to secure personal financial benefits or economic interest for themselves, any member of their immediate family, any individuals or entity with whom the employee has a business relationship that

renders an employee economic benefit. A perceived and/or real conflict of interest arises whenever the employee has the opportunity to influence university or Authority operations or business decisions in ways that could result in a personal financial benefit or economic gain to the employee, a member of an employee's immediate family, or individuals or entities with whom the employee has a business relationship which renders the employee economic benefit. Although certain specific examples of conflicts of interest are provided in this policy, they are meant only as illustrations, and supervisors and employees are expected to use good judgment to identify possible conflicts of interest that may adversely influence MUSC/MUHA operations, and to avoid or manage them as appropriate.

4) This policy is not intended to prohibit approved and appropriately managed economic development activities related to MUSC/MUHA generated intellectual property, including MUSC/MUHA employee involvement with startup companies, Small Business Administration (SBIR/STTR) funded research and Centers of Economic Excellence Activities. However, any such activities by MUSC/MUHA employees that make use of university or Authority property, facilities, equipment or other resources for personal benefit shall be approved as required herein, of benefit to MUSC/MUHA, and for fair value.
5) Nothing in this policy shall be construed to permit, even with disclosure, any activity that is prohibited by law.

B. Definitions

1) *Conflicts of interest* occur when an employee or immediate family member receives personal financial benefit or an economic interest from the employee's position in a manner that may inappropriately influence the employee's judgment, compromise the employee's ability to carry out MUSC/MUHA responsibilities or, be a detriment to MUSC/MUHA integrity.
2) *Immediate family* includes the employee's parents, spouse, siblings, children, stepchildren, and grandchildren.
3) *Manage and managing* means an affirmative action by the university or the Authority to establish parameters or conditions that minimize or eliminate the risk of the perceived or real conflict of interest.
4) *Personal financial benefit or economic benefit* is defined as anything of monetary value, including salary, commissions, fees, honoraria, gifts of more than nominal value, equity interests, interests in real or personal property, dividends, royalty, rent, capital gains, intellectual property rights, loans, and forgiveness of debt. "Personal financial benefit" does not include:
    a) compensation or payments received from MUSC/MUHA or any of its affiliates or the Ralph H. Johnson Department of Veterans Affairs Medical Center;
    b) payments for participation in seminars, lectures or other educational activities as long as not acting in the employee's official capacity, or reasonable expenses for the same activities even if acting in official capacity;
    c) payments for participation in seminars, lectures or other educational activities, and reasonable expenses for the same activities as long as acting within the context of an individual's Faculty Appointment Contract;

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d) any financial interest arising solely by means of investment in a mutual, pension, or other institutional investment fund over the management and investments of which the employee or an associated immediate family member does not exercise control; and
e) investments in publicly traded entities as long as employee owns less than a five percent and/or less than $10,000 stake in said entity.

5) *University* means Medical University of South Carolina.
6) *Authority* means the Medical University Hospital Authority.
7) *MUSC or MUHA responsibilities* are defined as the responsibilities of an employee to perform MUSC or MUHA activities as defined by management or contract.

C. Policy provisions

1. An employee shall disclose any situation in which the employee has, or may have, a real or potential conflict of interest as defined herein. These conflicts of interest must be reported annually to the appropriate Conflict of Interest Office. Modifications to existing disclosures or a new activity will require submittal of an additional disclosure in a timely manner. An authorized group of employees shall review the disclosure and recommend to the appropriate Vice President a suitable action plan to eliminate or manage the conflict of interest so as to ensure that MUSC or MUHA business is not improperly influenced or adversely affected. In the event that there is no reasonable way to manage a conflict of interest, then the employee may be prohibited from participating in related MUSC/MUHA affairs until such a time as the conflict is eliminated. In other words, employees and Officers of MUSC/MUHA have a duty to immediately disclose, manage or eliminate any real or potential conflicts of interest that are not in the best interests of the University or Authority.
    a. An employee shall disclose conflicts of interest in writing on an approved paper or digital Conflicts of Interest Disclosure Form, including a statement describing the nature and extent of the conflict, to their supervisor and to the appropriate Compliance Office. This disclosure must be completed annually, on a form designated for such purposes. A new disclosure form must be completed whenever a new conflict of interest arises or when a significant change occurs concerning an existing disclosure. See the following Web site for this disclosure form: Annual Conflict of Interest Disclosure < https://www.carc.musc.edu/coi >.
    b. If a supervisor becomes aware of a conflict of interest that an employee has not disclosed, the supervisor shall discuss the situation with the employee, require that a written disclosure be made as provided in this policy, and inform the Office of Compliance to anticipate the receipt of a new Disclosure Form.
    c. All conflicts of interest shall be reported to the MUSC or MUHA Office of Compliance. The Board of Trustees or its designee will retain authority to take such action as it deems appropriate regardless of any action or inaction by an Officer of MUSC and/or MUHA.
2. The following are examples of conflicts of interest requiring disclosure. These examples are illustrations only and are not meant to be exclusive.
    a. Employee or immediate family member has a financial interest in a business entity with which the University or Authority does or proposes to do business, and

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the employee is in a decision-making role or otherwise is in a position to influence the University's or Authority's business decisions regarding the business entity. Business entity examples for which an employee disclosure is required:

i. finance or accounting services
ii. equipment services
iii. marketing services
iv. construction services
v. consulting
vi. counseling
vii. catering
viii. computer supplies
ix. programming
x. architectural services
xi. legal services
xii. grant preparation
xiii. temporary personnel services
xiv. office or laboratory supplies
xv. painting services
xvi. lawn and grounds services

b. Employee holds or assumes an executive, officer or director position in a for-profit or not-for-profit business or entity engaged in commercial, educational, or research activities similar to those in which the University or Authority engages.
c. Employee participates in consultation activities for a for-profit or not-for-profit business or entity engaged in commercial, educational or research activities similar to those of the University or Authority.
d. Employee holds or assumes an executive, officer or director position in a for-profit or not-for-profit business or entity that does business with the University or Authority.

3. The activities listed below are prohibited unless sanctioned by an Officer of the University or Authority. Sanctioned activities are those activities documented within an individual's Faculty Appointment Contract, contained within an employee's job description or expectations, appropriately authorized agreements, Memoranda of Understanding, or otherwise approved by the employee's Vice President.
   a. Significant use of University or Authority property, facilities, equipment or other resources in any manner other than as part of the employee's responsibilities, that results in personal financial benefit or economic interest to an employee, a member of an employee's immediate family or business with which the employee has a business relationship.
   b. Using significant University or Authority property, facilities, equipment or other resources in any manner to support an entity not associated with the University or Authority unless special permission is provided in writing by an authorized Officer of MUSC or MUHA.
   c. Using University or Authority stationery, letterhead, logo, or trademark in connection with outside activities, other than activities having a legitimate relationship to the performance of University or Authority business.

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d. Using University or Authority facilities, resources, or the employee's position at the University for the purpose of advocating, endorsing, or marketing the sale of any goods or services, other than as part of the employee's responsibilities, without the prior approval in writing by an authorized Officer of MUSC or MUHA.
e. Using the University or Authority name, trademark or trade name for personal business or economic gain to the employee, a member of the employee's immediate family or a business with which the employee has a business relationship.
f. Using any University or Authority intellectual property data or information that is not in the public domain for personal financial benefit or economic gain to the employee or a member of the employee's immediate family, or a business which the employee has a business relationship.
g. Using any University or Authority employee for any outside activity during normal work time for which he or she is receiving compensation from the University or Authority (not applicable when employees are on a paid or unpaid leave).
h. Participating in the selection or awarding of a contract between the University or Authority and any entity with which an employee is dually employed, is seeking employment or has been offered employment.
i. Other activities may be prohibited if there is no reasonable way to manage an associated conflict of interest.

D. Employee responsibilities

1) Employees shall not engage in the prohibited activities listed above unless sanctioned in advance or in any other activity that has been prohibited following a completed review of an employee's conflict of interest disclosure.
2) Employees shall disclose a real or perceived conflict of interest as described above:
   a) As soon as the employee knows of the conflict, and then annually thereafter for as long as the conflict continues to exist;
   b) In writing on the approved Conflict of Interest Disclosure Form;
   c) To the appropriate MUSC or MUHA Office of Compliance;
3) Employees shall avoid any involvement with all related University or Authority activities and decisions until such time as the conflict of interest has been evaluated and the disclosed activity been approved.
4) If there is any question whatsoever about an activity representing a conflict of interest, then the employee should consult with an MUSC or MUHA Office of Compliance or an MUSC or MUHA Office of Legal Counsel for direction.

E. MUSC/MUHA responsibilities

1. Supervisors shall ensure that all new employees are informed of this policy.
2. Supervisors and administrators of MUSC and MUHA shall ensure that all current employees are reminded of this policy on a periodic basis.

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3. The University and Authority shall develop a peer process to evaluate conflict of interest disclosures, and to review the conduct of approved Management Plans.
4. In the event that a reported conflict of interest is approved, the corresponding Office of Compliance shall ensure there is an appropriate Management Plan in place to monitor and manage the situation so that resources are used in an appropriate manner and that there is no improper influence on University or Authority decisions.
5. The Offices of Compliance shall ensure that Conflicts of Interest Disclosure forms are retained for future reference. Upon an employee's transfer from the unit or termination from the University or Authority, associated Conflict of Interest Forms shall be retained by the Offices of Compliance for a minimum of three years.
6. Supervisors shall establish and maintain a work environment that encourages employees to ask questions about real or potential conflicts of interest.
7. If supervisors have any question whatsoever about an external activity representing a conflict of interest, they should consult with an Office of Compliance or an Office of Legal Counsel.

F. Sanctions for violation

1) Violations of University or Authority policies, including the failure to avoid a prohibited activity or disclose a conflict of interest in a timely manner, will be dealt with in accordance with applicable policies and procedures that may include disciplinary actions up to and including termination of employment.
2) The Board of Trustees, as the ultimate governing body, or its designee retains authority to make a final determination of any mattered covered by this Policy.

G. South Carolina state law

1. The South Carolina Ethics Government Accountability and Campaign Reform Act (herein the "Ethics Law") S.C. Code § 8-13-100, among other things, makes it unlawful for a public official, public member or public employee to knowingly use his official office, membership or employment to obtain economic interest for himself, a member of his immediate family, an individual with whom he is associated* or a business with whom he is associated**. This policy is implemented in addition to any requirements of the Ethics Law. Certain persons associated with the Authority or University are required to make filings with the South Carolina Ethics Commission and completion of the form attached to this policy will not satisfy that requirement.

* Defined in the Act as: "Individual with whom he is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

** Defined in the Act as: "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, an officer,

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owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Office responsible for this policy:

https://web.musc.edu/about/coi

7.05.02 Research Conflict of Interest Definitions and Guidelines

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

https://web.musc.edu/about/coi/coi-committees

For additional information related to research conflict of interest, please refer to the Conflict of Interest website: https://web.musc.edu/about/coi/coi-committees

The Charter of the MUSC Administrative and Clinical Conflict of Interest Committee can be found at: https://web.musc.edu/about/coi/coi-committees

7.06 University Compliance

The faculty is subject to the University Compliance Plan, the most current version of which is included at: https://web.musc.edu/about/compliance

University and Authority Compliance Offices:
https://web.musc.edu/about/compliance

Research Data Ownership & Record Retention Policy (including guidelines for sequestration of documents) (RDO&RR)
https://research.musc.edu/resources/ori/irb/policies

7.07 Industry Relations Policy

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information

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			Nov 2014		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

This policy establishes guidelines for University-Industry relationships to ensure that individuals who work for MUSC interact with Industry knowing the rules of the University and State that govern such interactions.

I. Policy Statement

MUSC recognizes the value of its relationships with the healthcare industry ("Industry"). The University also believes that such relationships must be entered into on the basis of a partnership that advances the benefits of biomedical research, education and clinical care in pursuit of improving human health. Importantly, these activities must avoid either the existence or impression of professional impropriety by University or MUSC individuals who are entrusted with the integrity of the institution's educational, clinical or research programs.

II. Scope

This policy applies to all Trustees, Officers, Faculty, Administrators, Staff, Students and Trainees including all full-time, part-time, temporary and contract employees of the Medical University of South Carolina. The Medical University Hospital Authority and affiliates of the University (including but not limited to University Medical Associates of the Medical University of South Carolina, the MUSC Foundation and the Foundation for Research Development), which derive their not for profit status from MUSC, shall as a condition of conducting business with MUSC, develop and implement policies and procedures substantially similar to and consistent with this policy.

III. Approval Authority

Board of Trustees

IV. Purpose of this policy

The purpose of this policy is to establish straightforward, effective and principled guidelines for University-Industry relationships to ensure that individuals who work for MUSC interact with Industry knowing the rules of the University and State that govern such interactions. This is critical to protect the interests of the individual, the University and our patients as we undertake these activities to achieve our ultimate goals of promoting scientific research, evidence based clinical care, and educating trainees. The University recognizes the importance of mutually beneficial relationships with Industry as long as those relationships do not compromise the integrity of our missions. Rather, one of the overarching aims of the policy is for full disclosure of consulting and educational activities by MUSC personnel to help ensure that these activities meet the guidelines set forth in this policy.

V. Who should be knowledgeable about this policy

All MUSC enterprise employees, students, and trainees

VI. The Policy

1. Consulting and Educational Programming:

a). Consulting

Purpose: Consulting interactions can facilitate the advancement of innovative ideas and discoveries, both of which ultimately benefit the general public through the transfer of scientific discovery. This section of the policy clarifies the terms of interactions with Industry where the primary goal is scientific exchange.

Policy Statement: Consulting refers to all activities where the external entity furnishes a Personal Financial Benefit or an Economic Benefit and/or other Personal Benefit as reimbursement/compensation for the exchange of clinical, educational, professional and/or scientific information or activities by Covered Persons (see also above). The provision of bona fide Consulting Services by Covered Persons to external entities is consistent with MUSC's mission when those activities:

(a) involve a two-way exchange of ideas in which each party benefits from the interchange;
(b) are relevant to and enrich the consultant's research, education or other professional responsibilities;
(c) do not interfere with the consultant's responsibilities to patients or the institution;
(d) do not adversely affect the consultant's intellectual independence or the integrity of the institution;
(e) are confined to the exchange of clinical, educational, professional and/or scientific information.

i. Approved consulting activities include but are not limited to the following:

- Serving on advisory boards, expert panels, leadership groups, data safety monitoring boards, and/or similar groups.
- Providing expert witness testimony. (See MUSC Faculty Handbook.)
- Providing scientific or medical presentations or expertise to industry scientists, research and development staff, and/or their staff.
- Providing product review, product evaluation, and product feedback for Industry.

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- Demonstrating an Industry product (i.e., teaching when and how to appropriately use a product) for medical or research professionals in the context of medical or scientific education.

- Providing consultation to venture capital firms, and serving as a scientific or medical advisor to Industry for purposes of MUSC intellectual property development.

ii. Prohibited consulting activities include but are not limited to the following:

- Consulting activities requiring or appearing to require MUSC staff to endorse or appear to endorse a particular product, drug, device, or service (either orally or in writing). This includes demonstrating an Industry product for promotional or sales purposes; and appearing (or being quoted) in a video, television, radio, internet broadcast, web site, or in other publicly-broadcasted or distributed materials for promotional or sales purposes without proper authority or approval.

- Participating in ghostwriting, which is defined as Industry sponsorship for (i) making a major contribution towards the writing and/or research of scientific and medical publications without receiving authorship; or (ii) accepting authorship for a scientific or medical publication without making a major contribution towards the writing and/or the research.

- Serving as an Industry sponsored "named reference" for a product recommendation.

- Providing MUSC slides, videos, pamphlets or any other MUSC logo or copyrighted materials to Industry for marketing or promotional use. Such use must be approved in accordance with MUSC/MUHA policy or procedure.

- Providing services that conflict or appear to conflict with SEC rules and regulations for stock brokers, investment houses, equity management companies, banks, and/or financial institutions.

- Providing services to an Industry that is in a known legal dispute with MUSC.

- Speaking to investors on behalf of a company, except when the company is an MUSC sanctioned and supported faculty start-up company.

The lists of approved and prohibited consulting activities are the same whether consulting is done on personal or professional time. All Covered Persons who participate in consulting activities are subject to the approval procedures outlined in section VI.1.g of this policy.

b). Educational Programming

Purpose: MUSC recognizes the value to the institution and Covered Persons in having such opinion leaders present educational material before professional and lay groups. As noted in the MUSC Faculty Handbook, activities such as presentations to professional groups such as

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other universities, health systems, and professional societies are considered to be within the scope of Covered Persons' work. Education provided by Covered Persons shall be in the best interest of the public, independent from commercial interest, and refrain from product promotion. Additionally, MUSC recognizes the benefits that Covered Persons obtain by attending educational programs.

Policy Statement: This policy applies to all medical, healthcare and scientific speaking engagements or educational presentations, with or without professional continuing education credit, where Industry furnishes a Personal Financial Benefit or an Economic Benefit and/or other Personal Benefit as reimbursement/compensation for the provision of those presentations by Covered Persons. The policy also applies to Covered Persons who attend such educational meetings. Educational programming should be independent from commercial interest and promote evidence-based clinical care and/or advance scientific research. MUSC recognizes that bona fide educational activities typically adhere to ACCME, ADA CERP, ACPE, ANCC or other national accreditation standards and qualify for continuing education credit. Other acceptable activities that do not provide CE credits but would serve recognized educational purposes include presentations to industry (e.g., providing scientific or medical expertise) and training for medical or research professionals (e.g., teaching practitioners when and how to appropriately use a medical device). Otherwise, non-accredited, industry sponsored speaking to healthcare providers is not consistent with the standards of allowable educational programming due to the risk of industry influence.

i. Approved educational speaker activities include but are not limited to the following:

Providing continuing education (CE) services, scientific or medical presentations or expertise at academic meetings and professional societies, at other universities or research institutions, and at lay organization meetings as long as the following conditions are met:

- These activities are designed to promote evidence-based clinical care and/or advance scientific research; • The presentation is made in accordance with professional accreditation standards such as the ACCME's Standards for Commercial Support, 1 the ADA CERP Continuing Education Recognition Program, or other national accreditation standards including those set by the ACPE and the ANCC, i.e., the educational content, including handouts and visual-aids, must be determined entirely by the speaker; and

- The financial support of industry, if provided, is clearly disclosed. Payments to Covered Persons for speaking and for travel costs for these approved educational activities are permitted for approved speaker activities (see section VI.1.c for rules about payments).

ii. Prohibited educational speaker activities include but are not limited to the following:

- Speaking at any educational meeting where the content of the presentation, including handouts and visual-aids, is not determined entirely by the Covered Person.

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• Educational speaking should be independent from commercial interest, and refrain from product promotion. As such, speaking activities frequently referred to as speakers' bureaus are prohibited. Speakers' bureaus are typically characterized by, but are not limited to, the following attributes:

1. Promotional educational activity concerning a biomedical or pharmaceutical product;

2. The company has the contractual right to dictate or control the content of the presentation or talk;

3. The company creates the slides or presentation material and/or restricts or otherwise limits the Covered Person's intellectual independence over the educational content of his or her presentation; and/or

4. Covered Persons are expected to act as a company's agent or spokesperson for the purpose of disseminating company or product information (e.g., the presentation is focused on a healthcare product made by the sponsor and does not include a balanced representation of alternative products or services).

If you have questions about whether a speaking activity is a speakers' bureau, you should consult with the COI Office for guidance.

• Providing industry sponsored continuing education (CE) services or scientific or medical training to an audience consisting only of MUSC attendees.

iii. Attendance at educational meetings sponsored by Industry

Covered Persons may attend any educational meeting sponsored by industry but may not undertake the following:

• Receive gifts, other compensation, or travel costs for attendance;

• Participate in industry sponsored food, beverages or entertainment events if the audience is restricted to MUSC personnel only (i.e., MUSC personnel can only accept industry sponsored meals, beverages and entertainment events if the audience is not restricted to MUSC personnel and is open to members of the professional community at large).

The lists of approved and prohibited educational activities are the same whether these activities are done on personal or professional time. All Covered Persons who participate as speakers in Educational Programs are subject to the approval procedures outlined in section 4g of this policy.

c). Payments for Consulting and Educational Programming

Payments for consulting and educational services should be at a level commensurate with effort. If done on professional time, the distribution of payment to either the individual or the institution will be at the discretion of each college or department. For all outside activities, Covered Persons should coordinate with the Conflict of Interest Office to determine reporting requirements for any industry relationship.

Senior institutional officials (defined here as the President, Vice Presidents, Deans and Associate Deans) who conduct outside activities that fall within the institution's missions and/or relate to their service as institutional leaders must conduct those activities under a written agreement with the institution. Remuneration for the outside activity must be paid to the institution and cover the senior official's time and effort for the work; compensation should not be in addition to the senior official's institutional salary.

d). Leave Status Requirements for Consulting and Educational Programming Activities

Consulting and Educational Programming activities may occur on either Personal Leave (time) or Professional Leave. Please refer to section XI of this policy for specific definitions.

Consulting or Educational Programming Conducted on Personal Leave

• MUSC resources (e.g., secretarial assistance, office space, etc.) are not allowed to be used while providing consulting services or educational programming activities performed on personal time.

• Covered Persons considering to undertake consulting or educational programming activities with a company with whom they are performing concurrent research should consult with the Conflict of Interest Office.

• Covered Persons who consult or conduct educational programming while on Personal Leave may retain 100 percent of the fee; this fee must be paid directly to the Covered Person from the external entity. The Covered Person is responsible for securing payment for these consulting or educational activities, tax liability, and any financial concerns associated with such payments.

• MUSC does not provide liability insurance coverage for Covered Persons performing consulting OR educational programming activities on personal leave.

• Covered Persons may provide consulting or educational services on Personal Leave in conjunction with MUSC approved travel. Additional travel expenses incurred by the consulting or educational activities (e.g., additional hotel night/s, per diem, transportation, miscellaneous) will be the responsibility of the Covered Person.

• Covered Persons should be aware that payments received from medical device, pharmaceutical manufacturers and biomedical suppliers are subject to the Physician

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Payment Sunshine Act and will be made publicly accessible via a Centers for Medicare and Medicaid Services website.

Consulting or Educational Programming Conducted on Professional Leave

- MUSC resources may be utilized to conduct consulting or educational programming on professional leave.

- Covered Persons considering to undertake consulting or educational programming activities with a company with whom they are performing concurrent research should consult with the Conflict of Interest Office.

- If the consulting or educational programming is completed on MUSC time while on professional leave, payment must be made to MUSC and allocated to an account within the college, department or division. Each college, department or division will be responsible for the disbursement of funds.

- Consulting or educational programming conducted on professional leave requires a contract or agreement; please see section VI.1.f of this policy.

- MUSC provides liability insurance coverage for Covered Persons performing consulting activities or educational programming on professional leave.

e) Consulting or Educational Programming Conducted with Concurrent Research

For consulting or educational activities that occur with concurrent research with the same company, Covered Persons should consult with the Conflict of Interest Office.

f) Consulting or Educational Programming Contracts

Professional Leave Status:

All formal consulting and educational programming relationships approved for Covered Persons that are conducted while on Professional Leave must be formalized in a fully executed contract. All such agreements must be channeled through the appropriate contract approval process.

- All agreements must clearly describe the services and deliverables to be furnished by the consultant or speaker, including the time required for such services or method of calculating compensation, a description of the compensation due under the agreement, a declaration regarding disposition of intellectual property rights if applicable, and a provision to protect the use of the MUSC name if appropriate. The agreement should be consistent with MUSC policies and eliminate unauthorized transfer of MUSC intellectual property.

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- An agreement must be signed and dated by all parties prior to the commencement of any of the consulting or educational programming activities. All agreements must be consistent with MUSC's policies, mission and duties to its stakeholders.

- The consultant or speaker is expected to maintain records of the consulting or educational programming activities for 6 years after the termination of the contract.

Personal Leave Status:

Covered Persons who consult or provide educational programming on Personal Leave are acting as independent contractors. Covered Persons may not bind or obligate MUSC in any way. Contracts entered into by Covered Persons acting as independent contractors should not contain any references to MUSC or its Affiliates; this includes an individual title (i.e., Professor, Director etc.) or work addresses.

g) Approval Process for Consulting and Educational Programming

All consulting and educational programming whether occurring on Personal Leave or Professional Leave must not impact negatively on MUSC or MUSC's research, educational or clinical missions. For all outside activities, Covered Persons should coordinate with the Conflict Of Interest Office to determine reporting requirements for any industry relationship. Requests for consulting and educational programming occurring on Professional Leave must be approved by the department chair or appropriate supervisor during the university's contract approval process. It is recommended that Covered Persons notify their department chair or supervisor of any consulting or educational programming occurring on Personal Leave, as individual departments and/or colleges may have additional requirements.

2. Gifts

Covered Persons and their immediate family members may not accept gifts of value exceeding $10 from vendors or other representatives of industry. Examples of gifts include, but are not necessarily limited to, travel and lodging expenses; membership dues; admission fees; preferential terms on a loan, goods or services; or the use of real property; for this section, "gifts" does not include food and beverages which is a subject handled in Section 6 below.

Acceptance of travel funds to participate in meetings or training directly related to ongoing sponsored research is not considered a gift and is allowable.

Covered Persons may accept travel funds from scientific or professional societies that are funded by industry, as long as the society controls the selection of the recipient. Covered Persons may not accept travel funds directly from industry but travel support from industry funds provided to MUSC is allowed.

3. Food, Beverages and General Hospitality

Except as noted below, Covered Persons should not accept food and beverages, support for social events, or other hospitality offered directly by Industry to the Covered Person. Industry support for food and beverages for college, department or division meetings or retreats is prohibited.

Covered Persons attending an educational meeting or conference may participate in food, beverages and social receptions sponsored by Industry as long as invitation to these events is open to non-MUSC attendees as well, i.e., the event is open to all meeting attendees.

A Covered Person engaged in off-site consulting may accept food and beverages as a part of a reasonable compensation package for consulting services.

Covered Persons cannot participate in industry sponsored food, beverages and/or entertainment events that are provided only for a select invited individual or group of individuals if the primary purpose of the event is for marketing and promotional purposes. However, this restriction does not preclude allowable activities, such as site visits and meetings with potential vendors, which may occur when obtaining contracted goods and services; these activities are governed by state and MUSC and/or MUHA procurement guidelines. Covered Persons should recognize that attendance at an industry supported event may cause their name and institutional affiliation to be reported as required by federal regulation. This can be avoided by paying for one's own meal at such events, and removing one's name from the attendance list.

4. Industry Supported Continuing Education Programs

• Continuing Education (CE) programs supported by Industry are permitted provided the following criteria are met:

o Industry sponsored programs offering continuing education (CE) credit must be processed through the Office of Continuing Medical Education if appropriate and adhere to the standards for commercial support established by the ACCME, the ADA CERP, the ACPE, the ANCC, or other such accrediting or licensing body if available.
o Industry provided food and beverages are prohibited at educational programs in which the only attendees are from MUSC, both on campus and off campus.
o Students or trainees may participate in the continuing education programs as long as the programs are structured group settings that are supervised by faculty.
o Appropriate disclosure statements are made in any pre-meeting announcement and by the speaker prior to beginning the program.
o Companies seeking to provide support for CE programs may do so through unrestricted educational grants.

5. Educational Materials and Equipment

Donations of educational materials and equipment may be accepted. Such donations are expected to be used by faculty, staff, students and trainees and are not expected to be used by a single Covered Person. Donations are expected to be donated directly to an appropriate

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college or departmental official within the University or a University affiliate, and documentation of the donation, including the value of the equipment donated and the date of the donation, should be retained. Donations of capital equipment require approval of the Executive Vice President for Academic Affairs and Provost, except in cases of sponsored research, in which equipment donations are managed by the Office of Research and Sponsored Programs.

6. Scholarships and other Educational Funding for Students and Residents

Industry support for student scholarships, residents and fellows should be made in cooperation with the appropriate MUSC entity or University official. This may include the MUSC Foundation or the MUSC Foundation for Research Development, the Development Office, the Office of Research and Sponsored Programs or senior leadership according to the Institution's policies and procedures. Covered Persons must obtain approval from the department chair, division director or college dean before soliciting Industry for these purposes. The appropriate MUSC entity or University Official must manage and oversee the receipt of such Industry support. The evaluation and selection of recipients of such funds and use of such funds must be at the sole discretion of the University, college, or department. All potential industry sponsors should be given the opportunity to contribute.

7. Fundraising and Business Development Activities

The Institution recognizes that the MUSC Foundation has a unique and integral mission to attract financial support that furthers the research, education and patient care initiatives of the MUSC enterprise. Similarly, the Institution recognizes that certain activities are necessary to further the strategic and business development initiatives of the institution. Activities necessary to the successful conduct of fundraising and strategic advancement on behalf of the Institution may continue. However, these activities are not permitted to influence educational, clinical or research operations of the Institution other than providing support to further those missions. Activiteis intended to further strategic and business development initiatives must be part of the Covered Person's official duties or approved in advance by a member of the President's Group

No gift shall influence or appear to influence Institutional decision-making related to procurement, patient care, education and research integrity. Any concerns shall be reported immediately to the Conflict of Interest Office. Notwithstanding anything in this section, SC state employees remain subject to the SC Ethics Law and must act in compliance with state regulations.

8. Charitable Contributions

Charitable contributions from industry for the benefit of the University or any of its affiliates must be made through the appropriate University channels. This may include the Development Office, MUSC Foundation or University leadership. The distribution of charitable contributions for their intended purposes will be the responsibility of the department, division director, college deans, and administration. Industry funding for

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sponsored projects (funding provided which is subject to terms and conditions) is accepted and managed on behalf of MUSC by the Office of Research and Sponsored Programs (ORSP).

9. Pharmaceutical Samples

Drug samples that are provided for distribution to patients will be handled in accordance with MUHA Policy C-26, Medication Samples.

10. Site Access

The MUSC Medical Center recognizes the value of information provided by various industry representatives but intends to limit access to its personnel and facilities to prevent interference with patient care activities. All vendors are expected to adhere to policy A-15, Account/Vendor Representatives https://www.musc.edu/medcenter/policy/Med/A015.pdf or any applicable contract with the vendor.

11. Use of Confidential Information

Unauthorized use of confidential, privileged or proprietary information by Covered Persons or their family members is prohibited. This includes but is not limited to, disclosure of such information to commercial entities without authorization; unauthorized use of such information to engage in a relationship with a commercial entity that leads to a Personal Financial Benefit or Economic Benefit for the Covered Person or their family member.

12. Purchasing

Covered Persons with any financial interest in any particular manufacturer of pharmaceuticals, devices or equipment or any provider of goods or services, must disclose such interests and recuse themselves from purchasing decisions relevant to the conflicting interests. Any Covered Person whose expertise is necessary to evaluate any product must disclose his/her financial ties to any manufacturer of that or any related product to those charged with the responsibility of making the purchasing decision.

13. Disclosure and Notification

Covered Persons shall disclose all relationships with commercial entities as described in the MUSC/MUHA Board of Trustees Conflict of Interest Policy. This policy can be found at www.musc.edu/coi.

If there is a question about appropriate interaction with a commercial entity or the potential for a Conflict of Interest, the Covered Person should consult with individuals within their chain of command, the MUSC Conflict of Interest Office, MUSC, MUHA or UMA Office of Compliance, or the MUSC General Counsel's Office for guidance.

VII. Special Situations

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Exceptions

The University Conflict of Interest Committee will review/consider requests for exceptions to this policy. Request for exceptions must be submitted in writing to the Conflict of Interest Office. Resolution of such requests will be documented in the minutes of the University Conflict of Interest Committee and reported back to the requestor and their supervisor. If additional recourse is desired after review and action by the University Conflict of Interest Committee, a Covered Person may submit their request in writing to the MUSC Executive Vice President for Academic Affairs and Provost for appeal.

VII. Sanctions for Non- compliance

Violations of this Policy, including the failure to avoid a prohibited activity or disclose relationships with commercial entities will be dealt with in accordance with applicable policies and procedures that may include disciplinary action up to and including termination of employment or medical staff privileges. Sanctions may include suspension or dismissal, nonrenewal of appointment, denial of eligibility to engage in research funded through MUSC, denial of merit pay, or other appropriate penalties. Such sanctions may require giving notice of relevant information to funding agencies, professional bodies or journals, or the public. Termination of medical staff privileges or denial of medical staff privileges under this policy will not be based upon a physician's individual competence, quality of care, or professional conduct. Therefore, the revocation or denial of appointment or reappointment will not be reportable to any agency or databank.

The Executive Vice President for Academic Affairs and Provost will determine the methods of resolving non-compliance with this policy and applying sanctions. The Executive Vice President for Academic Affairs and Provost may refer the matter to the appropriate College Dean or in the case of affiliates, to the senior administrative officer of that affiliate, take action on his or her own, or initiate MUSC procedures governing such discipline.The Board of Trustees, as the ultimate governing body, or its designee, retains authority to make a final determination of any matter covered by this policy.

IX. Related Information

A References, citations

- Korn D. Carlat D. Conflicts of interest in medical education: Recommendations from the Pew Task Force on medical conflicts of interest. Journal of the American Medical Association. 310(22):2397-2398, 2013.
- Boumil MM. Cutrell ES. Lowney KE. Berman HA. Pharmaceutical speakers' bureaus, academic freedom, and the management of promotional speaking at academic medical centers. Journal of Law, Medicine & Ethics. 40(2):311-25, 2012.

For further information regarding conflicts of interest in medicine and academics related to Industry relationships, visit the Industry Relations webpage on the Conflict of Interest website (https://web.musc.edu/about/coi/coi-policies).

X. Communication Plan

Review of this policy is covered in the annual mandatory training for all employees.

XI. Definitions:

For purposes of this policy:

Industry refers to any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, trust, enterprise, or other legal entity, including for profit and not for profit entities that are engaged in 1) the manufacture, distribution or sale of diagnostic or therapeutic drugs, medical/dental devices or equipment, supplies, or information technology, 2) medical testing, or 3) providing services for clinical care, research, or education. Industry also refers to entities that provide services to MUSC in the areas of physical plant, university and hospital administration, human resources, project management, clinical services and regulatory services. The term industry does not include professional associations and societies, not for profit foundations, law offices, not for profit volunteer health organizations, academic institutions or not for profit hospitals that provide medical research/education-related products and services.

Conflict of Interest is defined as the circumstance that arises when an individual has an opportunity to influence patient care, research and education of trainees regarding the purchase or use of products or services of an industry with which he/she has a secondary interest (financial relationship, or research support, or personal benefit).

Consulting (Consulting Services, Consultant, etc.) is defined as all activities where the external entity furnishes a Personal Financial Benefit or Economic Benefit and/or other Personal Benefit such as reimbursement/compensation for the exchange of clinical, educational, professional and/or scientific information or activities by Covered Persons.

Educational Programming is defined as medical, healthcare and scientific speaking engagements or educational presentations where Industry furnishes a Personal Financial Benefit or Economic Benefit and/or other Personal Benefit as reimbursement/compensation for the provision of those presentations by Covered Persons.

Personal Financial Benefit or Economic Benefit is defined as anything of monetary value - including salary, commissions, fees, honoraria, gifts, equity interests (which include any stock, stock option, or other ownership interest), interests in real or personal property, dividends, royalty, rent, capital gains, intellectual property rights, loans, and forgiveness of debt. The term "personal" also includes the Covered Person's immediate family, including parents, spouse, siblings, children, stepchildren and grandchildren.

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Other Personal Benefit is defined as a non-financial benefit to a Covered Person; for example, promise of a job promotion, future grant, research publication, clinical trial or authorship, etc. The term "personal" includes the Covered Person's immediate family, defined as parents, spouse, siblings, children, stepchildren and grandchildren.

Personal Leave is defined as that time away from work taken as annual leave , or any part of a 24-hour period when there are no MUSC assigned responsibilities (e.g., weekends or after hours when there are no MUSC assigned responsibilities).

Professional Leave includes time away from MUSC to conduct MUSC approved professional activities, while receiving compensation from MUSC. A request for this leave must be approved by the Covered Person's supervisor.

XII. Review cycle

At least every five years

The link to this policy can be found at:
http://academicdepartments.musc.edu/coi/coipolicies/coipolicies.htm

7.08 Faculty Start-up Ventures Policy

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	
Mar 2020	Mar 2020	Mar 2020	May 2020	May 2020	

I. Policy Statement
In order for MUSC to engage in entrepreneurial and economic development activities, parameters are required to ensure public trust and integrity in the course of the activities, and to create an environment that fosters transparent, principled activities.

II. Scope
This policy applies to all Officers, Faculty, Students, Administrators, and Staff, including all full-time, parttime, temporary, and contract Employees of the Medical University of South Carolina (MUSC) and the Medical University Hospital Authority ("MUHA") (collectively, "MUSC"), as well as third party consultants, contractors, vendors and any individual or entity that is provided access to MUSC's information resources. Affiliates (entities which derive their not for profit status from MUSC, including but not limited to MUSC Physicians, MUSC Physicians Primary Care, the MUSC Foundation, and the MUSC Foundation for Research Development ("FRD")) shall as a condition of continued business with MUSC and MUHA develop and implement policies and procedures substantially similar to and consistent with this Policy.

III. Approval Authority

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Dean's Council, Faculty Senate

IV. Purpose of This Policy

MUSC recognizes that the commercialization of discoveries can have significant benefits for society and is an important component of the mission of the academic community, as well as the strategic economic goals of MUSC and the State of South Carolina. Research from our nation's universities is a major source of discoveries and intellectual property that are essential for the country's continuing economic development. Relationships between academic and commercial entities have been encouraged and promoted through laws such as the Federal Bayh–Dole Act and the Life Sciences Act of South Carolina. Innovation and the technology commercialization resulting therefrom, is a pillar of Imagine 2020, the MUSC Strategic Plan, and is consistent with the Smart State Program in South Carolina.

Moreover, entrepreneurial entities which involve MUSC employees may bring significant benefit to the economic growth of MUSC and South Carolina. The association of faculty with outside entities may also have beneficial effects on their teaching and research activities, provide opportunities for research funding, and advance both MUSC's and the faculty member's reputation in the scientific community. Consequently, MUSC desires to support and facilitate these interactions.

These activities, however, must be undertaken in accordance with The South Carolina Ethics, Government Accountability, and Campaign Reform Act (the "State Ethics Act"), SC Code Ann. § 8-13-10, et seq., and MUSC's policies, including but not limited to the Conflict of Interest Policy, Industry Relations Policy, and Intellectual Property Policy.

V. Who Should Be Knowledgeable about This Policy

All MUSC enterprise employees

VI. The Policy

A. Disclosure of Outside Activities

Before engaging in Entrepreneurial Activities (as defined in Section X.B.), Covered Persons (as defined in Section X.A.) must document the activities on the Disclosure of Entrepreneurial Activity Form . The Disclosure of Entrepreneurial Activity Form is provided by MUSC FRD and attached in the Appendix. The Covered Person must circulate the Disclosure of Entrepreneurial Activity Form for approval by the Covered Person's Supervisor or Department Chair, College Dean (as applicable), and the Office of the Vice President for Research. If the Covered Person is a MUHA employee, the Disclosure of Entrepreneurial Activity Form must also be circulated to and approved by the applicable ICCE Chief. A record of the disclosure must be provided to MUSC FRD and the MUSC Conflict of Interest (COI) Office in addition to any annual conflict of interest disclosure required under the MUSC/MUHA Conflict of Interest Policy, as discussed below. In the event of any disagreement, the Vice President for Research will provide final resolution.

B. Disclosure to COI Office

The MUSC/MUHA Conflict of Interest Policy is not intended to prohibit approved and appropriately managed economic development activities related to MUSC-generated intellectual property, including MUSC employee involvement with startup companies, Small Business Administration (SBIR/STTR)-funded research and Centers of Economic Excellence Activities. However, any such activities by MUSC employees that make use of MUSC property, facilities, equipment, or other resources shall be for the sole benefit of the MUSC enterprise as required in the MUSC/MUHA Conflict of Interest Policy. All approved effort and financial relationships concerning Entrepreneurial Activities must be disclosed in the MUSC disclosure system in accordance with the MUSC/MUHA Conflict of Interest Policy. For Covered Persons required to submit annual disclosures, if changes in a relationship

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with an approved outside entity occur, the Covered Person is required to update their disclosure form within 30 days of the change.

C. Review of Outside Activities

It is recognized that association of a Covered Person with a company is often necessary for the commercialization of intellectual property. However, with the progression of time, such individuals may have to formally partition their effort and salary between MUSC and the outside entity. Such segregation of effort may be mandated as part of a Conflict of Interest Management Plan directed by the Covered Person's Department Chair, Supervisor, Dean or the Office of the Vice President for Research or its designee. Any Covered Person engaged in an Entrepreneurial Activity should have their activities reviewed by their Supervisor or Department Chair annually to determine if any adjustments are needed.

D. Permissible Use of MUSC Resources Associated with Entrepreneurial Activities

MUSC supports economic development within the State of South Carolina, and Entrepreneurial Activities of Covered Persons may be considered part of their duties if appropriately approved and documented. MUSC resources may be used in support of approved Entrepreneurial Activities provided these activities do not conflict with applicable policies, state and federal laws, and regulations regarding use of public facilities for private gain.

Permissible use of MUSC resources for Entrepreneurial Activities is limited to: (1) resources that are freely available to the public; or (2) incidental use of such MUSC resources that does not result in additional public expense. For example, "incidental use" may include use of material, personnel, or equipment when:

(a) The use of such MUSC resources does not increase MUSC expense;

(b) The use does not interfere with the Covered Person's obligation to carry out MUSC duties in a timely and effective manner;

(c) The use in no way undermines the use of resources and services for official purposes;

(d) The use does not express or imply sponsorship or endorsement by MUSC; and

(e) The use is consistent with MUSC policies, including but not limited to the MUSC Acceptable Use of Computing and Telecommunications Resources Policy as well as state and federal laws regarding obscenity, libel, political activity, the marketing of products or services, or other inappropriate activities.

A proposed use of MUSC resources that advances only the interests of a faculty or staff member, or of a non-MUSC entity with which a Covered Person he or she is associated without any concurrent benefit to the MUSC, is prohibited under this Policy.

Covered Persons may make "incidental use" of MUSC resources for Entrepreneurial Activities (as described above) if:

(a) The activity is an Entrepreneurial Activity as defined in Section X.B;

(b) Such Entrepreneurial Activity contributes to the MUSC's economic development, technology transfer, or other public service goals; and

(c) The Entrepreneurial Activity is consistent with and similar in nature to activities such as:

(i) Early stage activities associated with forming a nonprofit organization focused on health care, education, research, or public policy issues;

(ii) Activities in support of the development of a licensing agreement with an established company; or

(iii) Early stage activities associated with forming a company to which MUSC FRD expects to license intellectual property, whether or not MUSC FRD expects to acquire

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equity in the company.

E. Contracted Research

If a company executes a contract with MUSC for support of further research related to development of intellectual property, that company (the "Venture") will assume the full cost of research personnel and resources associated with this agreement, including Facilities & Administrative (F&A) costs derived from the most current and official MUSC F&A rates. Use of state or federal resources must comply with all applicable state and federal regulations.

The testing of interventions in human patients as part of a clinical trial requires special attention in cases where there are real or perceived conflicts of interest. Any involvement by the Venture and any related intellectual property relevant to clinical trials conducted at MUSC must be communicated to the appropriate Institutional Review Board (IRB) at the time the original protocol is submitted, and to clinical trial participants in the informed consent documents. Similar information must be communicated to any collaborators, co-investigators at MUSC and/or multi-site participants for such studies. For clinical trials involving a MUSC employee and/or trainee, or their immediate family, MUSC will contract for an outside IRB and/or independent clinical monitor(s) to have the research conducted at MUSC with any associated expenses paid for by the Venture. If MUSC has an institutional conflict of interest or the potential for an institutional conflict of interest in a clinical trial to be conducted at MUSC, an outside IRB must be contracted for review.

F. Management of Potential or Real Conflicts of Interest

Relationships between MUSC and outside entities may introduce actual and potential conflicts of interest. The MUSC Conflict of Interest (COI) Office shall manage these issues in an equitable manner, with the goal of empowering the development process in accordance with federal and state guidelines, the MUSC/MUHA Conflict of Interest Policy, and guidelines provided in this policy.

In most cases of conflict, the appropriate COI Committee, along with the Covered Person and his/her Supervisor or Department Chair, will devise a COI Management Plan that will attempt to be equitable to the individual(s) involved, promote the entrepreneurial goals of MUSC, and protect the academic interests of MUSC, including the scholarly pursuit of new knowledge. COI Management Plans may require adjustment as circumstances change, and therefore will be reviewed with the individual's Supervisor or Departmental Chair, as applicable, at least annually. Conflicts of interest will be disclosed to all appropriate constituencies, within the MUSC enterprise in accordance with the MUSC/MUHA Conflict of Interest Policy.

G. Intellectual Property

Intellectual property developed by Covered Persons is subject to the MUSC Intellectual Property Policy. The MUSC Intellectual Property Policy provides information on the reporting and ownership of intellectual property developed jointly by an MUSC employee and an outside entity.

Because MUSC is a state-supported institution, and because most research is federally supported and subject to federal regulations, Covered Persons cannot be given a favored position in respect to licensing the rights to intellectual property owned by MUSC. Options to technology rights, in lieu of full licenses, will be considered during the early stages of the Venture. Each option or license must be negotiated with MUSC FRD in open competition with all entities with a bona fide interest in commercializing the intellectual property. The fact that the Covered Person or members of their Departments are the inventor(s) or creator(s) does not ensure licensing of that intellectual property to the entity in which they hold special interest. Terms for all options or licenses must be based on fair value and conform to all applicable federal agency rules, regulations and restrictions.

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All research findings related to MUSC intellectual property will be open to publication in scientific journals with limited time delays as defined in the relevant licensing agreement.

Rights to intellectual property resulting from an outside entity's use of MUSC space and interaction with MUSC personnel will be governed by the MUSC Intellectual Property Policy, and/or the licensing agreement between the entity and MUSC FRD.

VII. Exceptions

MUSC FRD will review/consider requests for exceptions to this policy in conjunction with the MUSC Conflict of Interest (COI) Office. Request for exceptions must be submitted in writing to MUSC FRD and the COI Office. Resolution of such requests will be reported back to the requestor and their Supervisor. If additional recourse is desired after review and action by MUSC FRD and the COI Office, a Covered Person may submit their request in writing to the MUSC Vice President for Academic Affairs & Provost for appeal.

VIII. Sanctions for Non-compliance

Violations of this Policy, including the failure to avoid a prohibited activity or disclose relationships with commercial entities, will be dealt with in accordance with applicable policies and procedures that may include disciplinary action up to and including termination of employment or medical staff privileges. Sanctions may include suspension or dismissal, non-renewal of appointment, denial of eligibility to engage in research funded through MUSC, denial of merit pay, or other appropriate penalties. Such sanctions may require giving notice of relevant information to funding agencies, professional bodies or journals, or the public. Termination of medical staff privileges or denial of medical staff privileges under this policy will not be based upon a physician's individual competence, quality of care, or professional conduct. Therefore, the revocation or denial of appointment or reappointment will not be reportable to any agency or databank.

The Vice President for Academic Affairs and Provost will determine the methods of resolving noncompliance with this policy and applying sanctions. The Provost may refer the matter to the appropriate College Dean or in the case of Affiliates, to the senior administrative officer of that Affiliate, take action on his or her own, or initiate MUSC procedures governing such discipline.

The MUSC Board of Trustees, as the ultimate governing body, or its designee, retains authority to make a final determination of any matter covered by this policy. The MUSC Board of Trustees, or its designee, will make its determinations in accordance with The South Carolina Ethics, Government Accountability, and Campaign Reform Act (the "State Ethics Act"), SC Code Ann. § 8-13-10, et seq., and MUSC's policies, including but not limited to the Conflict of Interest Policy, Industry Relations Policy, and Intellectual Property Policy.

IX. Related Information

A. References, citations

1. MUSC/MUHA policies that relate to industry, IP and faculty/employee start-up ventures

(a) MUSC Intellectual Property Policy: https://research.musc.edu/resources/frd/forinventors/policies

(b) Disclosure of Entrepreneurial Activity Faculty start-up ventures forms on MUSC FRD website: https://academicdepartments.musc.edu/frd/

(c) MUSC/MUHA Industry Relations Policy and other Conflict of Interest Policies: https://web.musc.edu/about/coi/coi-policies

(d) MUSC Acceptable Use of Computing and Telecommunications Resources Policy

https://horseshoe.musc.edu/~/media/files/services-all-files/ociofiles/policies/pgc0002-musc-acceptable-use-of-computing-andtelecommunications-resources-policy.pdf?la=en

2. References and Resources

(a) South Carolina Launch, an SCRA Collaboration: Commercialization Services for Entrepreneurial startup companies: http://sclaunch.org

(b) SCBIO association dedicated to growing the life science industry in South Carolina: http:///scbio.org

(c) SCTR South Carolina Clinical and Translational Research Institute http://sctr.musc.edu

(d) Chair MUSC Research Conflict of Interest Committee: https://web.musc.edu/about/coi/coi-committees

(e) South Carolina Ethics Commission Rules of Conduct: http://sc.gov/rulesofconduct

(f) University of Wisconsin-Madison: http://grad.wisc.edu/research/policyrp

3. Related Statutes

(a) Bayh-Dole Act: 35 U.S.C. § 200-212; 37 C.F.R. 401; 37 C.F.R 404

(b) SC Life Sciences Act: SC Code Section 12-15-10 et seq. https://www.scstatehouse.gov/code/t12c015.php

B. Other

Questions regarding this policy can be directed to the Director of the MUSC Conflict of Interest (COI) Office, the Chief Innovation Officer, and/or the Executive Director for MUSC FRD.

C. Appendices

A.1 Disclosure of Entrepreneurial Activity Form

X. Definitions

A. "Covered Person(s)" includes all Officers, Faculty, Administrators, Staff, Students (including visiting students) and Trainees including all full-time, part-time, temporary and contract employees of the Medical University of South Carolina and the Medical University Hospital Authority, affiliates of MUSC (including but not limited to University Medical Associates of the Medical University of South Carolina, the MUSC Foundation and MUSC FRD which derive their not for profit status from MUSC, shall as a condition of conducting business with MUSC, develop and implement policies and procedures substantially similar to and consistent with this policy.

B. "Entrepreneurial Activities" include all activities inwhich any Covered Person engages as part of that Covered Person's participation in a startup or other company, which expects to or does commercialize intellectual property optioned or licensed from MUSC (FRD). Additionally, Entrepreneurial Activities include a Covered Persons' provision of services to a startup or other company based upon the Covered Person's professional expertise, to the extent such services are provided to a startup or other company that expects to or does commercialize intellectual property optioned or licensed from MUSC FRD.

C. "Venture" includes those arrangements as defined in Section IVI.E. above.

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7.09 Expert Testimony

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The Medical University of South Carolina neither encourages nor discourages faculty participation as witnesses in legal proceedings. All such requests or directives to serve as a witness because of professional training or position should be immediately reported to and receive the prior approval of the department chair or next higher administrator. Department chairs should file an annual report on all such witness activity with their respective deans.

It is expected that time and resources spent as a witness or consultant in legal matters be considered patient care-related and that all remuneration as set by the Medical University of South Carolina should be reimbursed to the faculty member's practice plan or appropriate college account.

7.10 Evaluation of Department Chairs, Deans, and/or Unit Directors

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

A process sanctioned by the Faculty Senate for the annual review by the faculty for performance of chairs, deans, and/or other unit directors has been approved by the Executive Vice President for Academic Affairs and Provost. Each May, the Executive Vice President for Academic Affairs and Provost's Office sends out questionnaires maintained at the following link to all faculty including part-time faculty

https://education.musc.edu/leadership/provost/reporting-units/institutional-effectiveness/assessment

Completed forms are sent anonymously to the Office of the Executive Vice President for Academic Affairs and Provost or his/her designee where results are collated, tabulated, summarized, etc., and given to deans of the respective colleges. The Executive Vice President for Academic Affairs and Provost informs the President of the Faculty Senate in March that the process has been completed and deans have reviewed the data which is archived in the event future reexamination becomes necessary.

7.11 Copyright Protections

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The faculty is subject to the university copyright policies. See Executive Vice President for Academic Affairs and Provost Office website: https://web.musc.edu/about/compliance/disclaimerfor the most current versions. Also, see "Intellectual Property" in section 7.12.04.

7.12 Faculty Research Activities

7.12.01 Research and Sponsored Programs

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The Office of Research and Sponsored Programs assists investigators and/or leaders of other sponsored programs in filing timely and complete grant or other support proposals, coordinating regulatory reviews, filing progress reports as required, and identifying potential sources of funding. It maintains liaison with federal, state, and other major research support agencies, assures compliance with MUSC, state, federal, and other agencies' policies and procedures, reviews proposals and provides administrative approval.

Faculty members are encouraged to consult the office at any time for information or advice on program development, application preparation, and grants and contracts management. Those who are ready to make application for funds should contact the Research Office early in the process to be sure there is sufficient time to complete the required administrative review before the submission deadline.

A directory of Resources for Researchers at the Medical University of South Carolina is available on request through the Research Office or the office of the Vice President for Research. Directory of Research Support, which includes abstracts of research being conducted, is also available on request. In addition, updated research support data on past and ongoing grants, cooperative agreements, contracts and other mechanisms of extramural funding are available through the office of the Vice President for Research.

The financial management of awards is provided by the office of Grants Accounting.

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Office of Research and Sponsored programs website:
https://research.musc.edu/resources/orsp

7.12.02 Responsible Conduct of Research

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The MUSC Responsible Conduct of Research policy is a key element of the overall University Compliance policies (see MUSC Webpage: http://academicdepartments.musc.edu/uco/rcor.htm)

and must be signed by all faculty, staff, and students of the university using research resources or facilities, or receiving research funds administered by the university, and those engaged in oversight of research facilities or funds. It was approved by the University Board of Trustees and is presented in its entirety below.

Section I. Introduction

MUSC is committed to the highest standards of professional conduct; therefore all members of the university community are expected to adhere to the highest ethical standards of professional conduct and integrity. The values we hold among ourselves to be essential to responsible professional behavior include: honesty, trustworthiness, respect and fairness in dealing with other people, a sense of responsibility toward others and loyalty toward the ethical principles espoused by the institution. It is important that these values and the tradition of ethical behavior be consistently demonstrated and carefully maintained.

Section II. Definitions

Members of the University Community or "Members": faculty, staff, fellows, residents and students or any individual employed by the university using university research resources or facilities, or receiving research funds administered by the university, and those engaged in oversight of research facilities or funds.

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Section III. Responsibilities

Fairness: Members of the university community have the obligation to respect, and to be fair to other members, students and persons they supervise, and to foster their intellectual and professional growth. Members must not engage in, nor permit, harassment and illegal discrimination. Members must not abuse the authority they have been given, and care must be taken to ensure that any personal relationships do not result in situations that might interfere with objective judgment.

Professional Conduct: Workplace and educational experiences must impart ethical standards of professional conduct through instruction and example. Members of the university community are expected to conscientiously fulfill their obligations toward students, advisees, colleagues and perform their duties as part of the university community. Members must support intellectual freedom.

Compliance: Members of the university community are expected to understand and comply with laws and regulations related to their duties. Members are responsible for adherence to university policies and procedures and are expected to comply with State and Federal laws. The university has the obligation to provide the opportunities necessary to assure awareness. Members are expected to see that those who report to them are informed about, understand and comply with regulations such as those for health and safety in the workplace, including the procedures to assure the ethical treatment of human subjects and animals and the use of hazardous materials. Members also have an obligation to report any noncompliance of regulations that are observed.

Authorship: In an academic environment we continually seek knowledge and understanding and must transmit our findings faithfully. Members of the university community who create scholarly products or works of art must guarantee the originality of their work and provide credit for the ideas of others upon which their work is built. All authors on a published work are responsible for the accuracy and fairness of the presented information. It is expected that members of the university community consider individuals for inclusion as authors on work submitted for publication if they have contributed substantially intellectually to the work. Special care must be taken to clarify authorship with entry level professional persons such as graduate students, postdoctoral fellows and trainees, preferably before the work is begun. It is inappropriate for members to include individuals as authors if they contributed only peripherally to the work.

Peer Review: Any material received by members of the university community to review for funding or publication is confidential and the ideas contained therein must not be used in any other manner by the reviewer unless specifically permitted.

Data Collection and Management: Falsification, fabrication and unacknowledged appropriation of the data of others by members of the university community are unethical and prohibited. At the outset of any research project, all participants are expected to discuss and agree upon data management and access and retention procedures including procedures for having participants join or leave the project. Privacy of collected data and

rights to intellectual property must be protected. Student rights to data are expected to be clearly specified. All documentation necessary to reconstruct investigations is expected to be available and data are to be recorded in a timely and consistent manner.

Fiscal Responsibilities: Members of the university community must not accept money or gifts for research on behalf of the university or as part of their university activities except as prescribed by university policy. All funds provided for research must be spent in ways consistent with the funding documents and in compliance with the guidelines on allowable costs. Members in charge of budgets have an obligation to monitor records of expenditures for compliance with university policies and procedures and to allow these records to be viewed by appropriate parties. Departmental files are the property of the university.

The university has the obligation to provide up-to-date records of financial transactions.

7.12.03 Misconduct in Scientific Research

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The principles that govern scientific research long have been established and applied in the discovery of new knowledge. The faculties and administrators at academic medical centers and teaching hospitals have a central and critical responsibility to maintain these high ethical standards. Validity and accuracy in the collection and reporting of data are intrinsically essential to the scientific process. Dishonesty in these endeavors is contrary to the very nature of research; that is, the pursuit of truth.

"Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." Honest error or differences of opinion are not included in this definition. [42 CFR § 93.103]. A finding of misconduct "requires that- (a) There be a significant departure from accepted practices of the relevant research community; and (b) The misconduct be committed intentionally, knowingly, or recklessly; and (c) The allegation be proven by a preponderance of the evidence." [42 CFR § 93.104].

Primary responsibility for the integrity of all scientific research rests with the individual researcher. The researcher accepts this responsibility with the understanding that the commission of misconduct in the research process is a major breach of contract between the researcher and the institution.

Pursuant to the Final Rule notice of 42 CFR Parts 50 and 93 Public Health Service Policies on Research Misconduct in the May 17, 2005 Federal Register effective June 16,

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2005, MUSC, as the awardee or applicant "institution," has complied with the necessary assurance to the Department of Health and Human Services (HHS) that there are both policies and procedures in place, and other institutional responsibilities are consonant with 42 CFR Subpart C, § 93.300-319 of the Federal Register's Rules and Regulations.

MUSC Policies and Procedures for Responding to Allegations of Research Misconduct may be accessed at http://academicdepartments.musc.edu/research/ori/ric/pp_IV.html . Both the inquiry and the investigative phases, as well as administrative actions in the event of a finding of misconduct are included. Information at this Office of Research Integrity website supersedes the *Faculty Handbook* in the event of a discrepancy.

7.12.04 Intellectual Property: Policies and Procedures

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Jan 2016			Apr 2016		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	
Mar 2020	Mar 2020	Mar 2020	May 2020	May 2020	

[Intellectual Property Policy 10.04-10.18 in the 2007 edition of the *Faculty Handbook* applies to faculty/staff who have intellectual property, conceived or first reduced to practice any invention or trade secret, prior to May 15, 2008]

1.0 Purpose

The purpose of this document is to delineate the policy and procedures pertaining to intellectual property created by employees, students, and visitors of the Medical University of South Carolina ("MUSC") and its affiliates, including but not limited to the University Medical Associates of the Medical University of South Carolina ("MUSC Physicians"), the Medical University Hospital Authority (MUHA), the MUSC Foundation, and the MUSC Foundation for Research Development ("FRD") (collectively the "MUSC Enterprise").

2.0 Objective

The objective of this Policy is to further the MUSC Enterprise's mission by (i) providing for the necessary protections, incentives, and vehicles to encourage the discovery and development of new knowledge for the public good; (ii) fostering research links and collaboration with industry and other academic institutions; and (iii) enabling advancement of economic development in South Carolina and beyond.

3.0 Applicability

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3.1 Employees (as defined below) and Students (as defined below): This Policy applies as a condition of appointment or employment by the MUSC Enterprise to every employee, and as a condition of enrollment by every student, who during the period of their appointment, employment, or enrollment by the MUSC Enterprise shall:

(a) Conceive or first reduce to practice, actually or constructively, any invention or trade secret;

(b) Prepare a copyrightable work;

(c) Contribute substantially to the existence of any tangible result of research; or

(d) Otherwise contribute to the creation of an item of intellectual property.

3.2 Visitors: This Policy applies as a condition of use of MUSC Resources (as defined below) to all persons who are not covered under Section 3.1 above, who through their use of MUSC Resources shall:

(a) Conceive or first reduce to practice, actually or constructively, any invention or trade secret;

(b) Prepare a copyrightable work;

(c) Contribute substantially to the existence of any tangible result of research; or

(d) Otherwise contribute to the creation of an item of intellectual property.

Such persons are called "Visitors" herein. MUSC Enterprise personnel allowing Visitor access to MUSC Resources shall ensure that the Visitor has been notified of this Policy and obtained written consent from the Visitor, using approved forms available on FRD's website, to be bound by this Policy.

4.0 Definitions

4.1 "Intellectual Property" as used herein is broadly defined to include inventions, discoveries, know-how, show-how, trade secrets, processes, unique materials, tangible results of research, copyrightable works, original data, and other creative or artistic works. Intellectual property includes, but is not limited to, that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort including, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

4.2 "Copyright able Works " shall mean copyrightable works as defined under the laws of the United States, including 17 U.S.C. 101 et seq.

4.3 "Traditional Academic Copyrightable Works" are a subset of Copyrightable works created independently and at the Creator's initiative for traditional academic purposes. Examples include manuscripts for scholarly journals, class notes, text books and supplemental materials, theses and dissertations, videos, digital video disks (dvds) containing audio, video, and/or interactive simulations as well as non-interactive demonstrations, compact disks containing audio, video and/or interactive simulations, as

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well as non-interactive demonstrations, articles, non-fiction, fiction, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, or other works of artistic imagination that are not created as a) an institutional initiative or b) with MUSC Resources. Specifically excluded from this definition are software works.

4.4 "Creator" means an Employee, Student, or Visitor who, individually or jointly with others creates Intellectual Property and (1) meets the criteria for inventorship under United States patent laws and revulations; (2) meets the criteria for author if hteIntellectual Property is a work of authorship qualifying for protection under United States copyright laws and regulations; or (3) is determined to have otherwise made a substantive intellectual contribution to the development of the Intellectual Property and is named on the applicable Intellectual Property disclosure form.

4.5 "MUSC Resources" means the material use of facilities, supplies, materials, or other resources of the MUSC Enterprise, with the exception of its library collections and other resources that are freely available tohte public. MUSC Resources do not include "incidental uses" of resources as that term is described in the MUSC Policies and Procedures for Employee Involvement in Entrepeneurial Activities.

4.6 "Net Proceeds" means the net amount received by MUSC or its designee from the sale, licensing or other disposition of any Intellectual Property, initially owned, pursuant to this Policy, in whole or in part by MUSC, after deduction of all costs reasonably attributable to the protection and distribution of such Intellectual Property, including any reasonable expense of patent or copyright prosecution, maintenance, interference proceedings, litigation, marketing or other dissemination and licensing.

4.7 "Employees" means full-time and part-time faculty (of all ranks and status as outlined in the MUSC Faculty Handbook) and all levels of full-time and part-time staff employed by the MUSC Enterprise.

4.8 "Students" means full-time and part-time students of all levels including those in training, such as post doctoral fellows and residents.

5.0 Disclosure and Assignment Requirements

5.1 Intellectual Property is required to be disclosed, pursuant to this Policy, by the Creator to FRD or another designee as determined by MUSC, using approved forms available on FRD's website. All disclosures are confidential. Ownership of the Intellectual Property included in such disclosure shall be determined pursuant to the applicable provisions of this Policy.

5.2 Disclosure should be made in a timely manner upon the Creator's recognition that Intellectual Property may have been created. Disclosure should be made prior to public presentations or publications, or other dissemination of the Intellectual Property to third parties whether public or confidential.

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5.3 Creators shall and hereby do assign to MUSC ownership of any Intellectual Property that MUSC is entitled to claim ownership of pursuant to this Policy as a condition of employment, enrollment, or use of MUSC Resources. Creators shall in good faith execute any and all assignment of ownership documents required to effectuate this Policy. MUSC may require assignment of ownership documents be signed for any Intellectual Property covered under this Policy regardless of whether the assignment of ownership document is required by law to transfer ownership to MUSC.

6.0 Ownership

6.1 Employees: MUSC shall be entitled to claim ownership of Intellectual Property which is made in the field in which the Employee Creator is engaged by the MUSC Enterprise or made with the use of MUSC Resources. The Employee Creator shall share in any proceeds derived there from in accordance with this Policy and subject to any preexisting commitments to outside sponsoring agencies.

6.2 Students:Intellectual Property created by Student Creators shall be owned by the Student Creator unless the Intellectual Property is created, conceived or reduced to practice (a) during the course of research conducted at MUSC; (b) through the use of MUSC Resources; (c) in conjunction with one or more persons who are otherwise obligated to assign their rights in such Intellectual Property to MUSC under this Policy; or (d) under terms of an MUSC Enterprise contract with a third party which provide for other disposition of the Intellectual Property. For Intellectual Property of categories (a) through (d), MUSC shall be entitled to claim ownership, and the Student Creator shall share in any proceeds derived there from in accordance with this Policy and subject to any preexisting commitments to outside sponsoring agencies.

6.3 Visitors: MUSC shall be entitled to claim ownership of Intellectual Property created by Visitors through the use of MUSC Resources. The Visitor shall share in any proceeds derived there from in accordance with this Policy and subject to any pre-existing commitments to outside sponsoring agencies.

6.4 Copyright:

6.4.1 Copyrightable Works that MUSC is entitled to claim ownership to under this Policy shall be treated as works for hire under the U.S, Copyright Act and MUSC shall be deemed the author. Employees, Studnets, and Visitors who would otherwise qualify as authors of the Copyrightable Works under United States copyright law will be considered Creators for purposes of this Policy.

6.4.2 Unless subject to any of the exceptions specified in Section 6.4.3, Creators shall retain all rights to Traditional Academic Copyrightable Works and are free to submit such for publication and execute assignment documents in their own name.

6.4.3 MUSC shall own Traditional Academic Copyrightable Works as follows:

(a) Works created pursuant to the terms of an MUSC Enterprise agreement with an external party;
(b) Works created as a specific requirement of employment or as an assigned MUSC Enterprise duty that may be specified, for example, in a written job description or any employment agreement;
(c) Works specifically commissioned by the MUSC Enterprise; and
(d) Works that are also patentable

Nothing contained herein shall be interpreted to grant ownership to MUSC of Traditional Academic Copyrightable Works that are manuscripts for submission to scholarly journals, including electronic submissions which contain multimedia interactive components.

6.5 Agreements Impacting MUSC Ownership

6.5.1 Sponsored Research Agreements: Ownership and disposition of Intellectual Property may be governed in whole or in part by sponsored research agreements, which may supersede certain provisions of this Policy. Prior to the execution of any sponsored research agreement which would conflict with this Policy, the Office of Research and Sponsored Programs must approve the agreement in question.

6.5.2 Consulting: Employees engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with MUSC Enterprise policies or with the MUSC Enterprise's contractual commitments, including but not limited to MUSC's rights to certain Emplyee know-how pursuant to this Policy. Such employees should make their university obligations known to others with whom they make such agreements and should provide the parties to such agreements a statement of applicable MUSC Enterprise policies regarding ownership of intellectual property and related rights.

7.0 Commercialization of Intellectual Property

7.1 Commercialization

7.1.1 In making commercialization decisions for its Intellectual Property, MUSC, or its designee, shall have full discretion, subject to the purpose, objectives, and requirements of this Policy. MUSC has designated FRD, a not-for-profit foundation whose sole purpose is to solely benefit MUSC, for the administration and commercialization of Intellectual Property.

7.1.2 FRD shall keep the Creator reasonably informed of its commercialization efforts; provided, however, if the Creator has an interest in an entity which desires to license or otherwise make commercial use of the Intellectual Property, the Creator shall not be privy to financial or other confidential information concerning the offers of competing parties.

7.2 Timetable

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7.2.1 Complete Submission: Upon submission of an Intellectual Property disclosure, FRD shall notify the Creator within thirty (30) days if the Intellectual Property disclosure is deemed complete. If it is not deemed complete, the Intellectual Property disclosure shall be returned to the Creator with a request for the additional information needed.

7.2.2 Ownership: Within nine (9) months of a complete submission, FRD shall inform the Creators if MUSC is exercising its right to claim ownership of the Intellectual Property.

7.2.3 FRDshall be reasonably diligent in making efforts to commercialize the Intellectual Property to which MUSC has claimed ownership.

7.3 Disposition of Intellectual Property

7.3.1 After evaluation of the Intellectual Property and review of applicable contractual commitments, FRD may (a) commercialize the Intellectual Property through licensing or other transfer of rights, (b) release it to the sponsor of the research under which it was made (if contractually obligated to do so), (c) release it to the Creator if permitted by law, or (d) take such other actions as are determined to be in the interest of MUSC and the public. Licensing or other transfer of Intellectual Property rights to entities which the Creator has an interest in is not prohibited by any provisions of this Policy. Commercialization by FRD or its designee may or may not involve statutory protection of the intellectual property rights, such as filing for patent protection, registering a copyright or securing plant variety certification.

7.3.2 Should the FRD abandon commercialization of MUSC-owned Intellectual Property, ownership may be assigned to the Creator as allowed by law subject to the rights of sponsors and the federal government, if applicable, and to the retention of a license to practice the Intellectual Property rights for the internal purposes of MUSC, its affiliated entities, and not-for-profit research collaborators. The minimum terms of such license shall grant MUSC, its affiliated entities, and it's not-for-profit research collaborators, the right to use the Intellectual Property in their internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. MUSC or FRD may require the repayment of its out of pocket expenses from any profits made due to commercialization by the Creator.

7.4 Distribution of Net Proceeds: After retaining a fifteen percent (15%) deduction from Net Proceeds for administration expenses of FRD, which shall be used ot further the objectives and purposes of this Policy, FRD shall distribute Net Proceeds at a frequency decided by FRD, in no event less frequently than annually. FRD may, in its sole discretion, withhold or delay distribution where there are forseeable expected costs reasonably attributable to theIntellectual Property yet to be incurred.
Net Proceeds shall be distributed pursuant to the following schedule:

Net Proceeds Creator(s) Department(s) Lab(s) Angel Fund MUSC College(s)

1-$10,000	100	0	0	0	0	0
> $10,000	40	10	15	10	20	5

For Creators who do not have a Laboratory, Department, and/or College appointment, the distribution of Laboratory, Department, and/or College shares will be determined, in advance of the receipt of Net Proceeds, by the applicable entity within the MUSC Enterprise by which the Creator is employed. In no event shall the Creator's share of the Net Proceedsw fall below the amounts specified above.

7.4.1 If Net Proceeds are attributable to more than one item of Intellectual Property (e.g. more than one patent), the Net Proceeds shall be first apportioned equally amongst each item (e.g. patent family) prior to application of the distribution schedule, unless otherwise agreed to by the pertinent Creators or if no agreement, as directed by the Divisional CEO (or their designees), as applicable, who shall be under no obligation to attempt to discern an apportionment other than equal.

7.4.2 If Net Proceeds are attributable to more than one Creator, distribution of Net Proceeds (the apportioned share if more than one item of Intellectual Property) pursuant to the schedule shall be made using an equal distribution for each Creator absent a written agreement to the contrary signed by all the Creators. If the Creators are from different Departments, Laboratories, and/or Colleges, if applicable, distribution of Net Proceeds to the Departments, Laboratories, and/ or Colleges will be equal.

7.4.3 Payment of the Creator's share shall not end due to the Creator's death, disability, or termination of employment or other association with MUSC. In the event of death, payment of the Creator's share shall be made to the Creator's estate.

7.4.4 In the event that a Creator changes Departments within the MUSC Enterprise, future distribution of the Department shares shall remain in the originating Department. If a Department ceases to exist, their shares shall accrue to the Angel Fund until and unless the Creator joins a new Department.

7.4.5 In the event that a Creator, or in the case of a Student Creator, when their mentor, leaves the employment of the MUSC Enterprise or terminates research operations then fifty percent (50%) of any remaining balance of Laboratory shares and future Laboratory shares from Net shall be redistributed to the Angel Fund and the remaining fifty percent (50%) will be distributed proportionally among the Department, MUSC and College according to the table in 7.4 with the stipulation that these funds be solely used to support further growth of intellectual property and technology transfer initiatives at the MUSC Enterprise.

7.4.6 For Student or Visitor Creators, the Laboratory, Department, and College shares shall be payable to the Laboratory, Department, and College of the Student's mentor or the Laboratory, Department, and College of the Visitor's sponsor, respectively.

7.4.7 In the event that equity is received from the commercialization of Intellectual

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Property, equity shall not be considered Net Proceeds until the equity can be freely tradable or liquidated. MUSC and/or FRD shall not be responsible or liable for any valuation fluctuations of equity.

7.4.8 Creators are responsible for any tax consequences associated with their receipt of Net Proceeds.

7.4.9 In the event FRD is a third party not-for-profit entity, MUSC can cause FRD to make payments on MUSC's behalf pursuant to the schedule.

7.4.10 Angel Fund: The proceeds designated for the Angel Fund shall be paid to FRD with its own budget line and be used to further the development of emerging MUSC owned Intellectual Property as approved by FRD's Board of Directors. The Intellectual Property Committee shall be periodically informed by FRD regarding the use of these funds.

8.0 Faculty Cooperation

The Creator will use reasonable effort to cooperate and assist, at no expense to the Creator, in the commercialization efforts of FRD. The Creator shall execute appropriate documentation for the protection of the Intellectual Property.

Potential conflicts of interest that a Creator has with respect to Intellectual Property and its disposition under this Policy shall be disclosed by the Creator pursuant to appropriate MUSC Enterprise policy(ies).

9.0 Intellectual Property Committee

9.1 Membership: The Intellectual Property Committee ("IPC") shall be a standing committee and consist of members appointed by FRD and approved by MUSC, MUHA, and MUSCP. Members shall be chosen from the various colleges and departments of the MUSC Enterprise which generate disclosures of Intellectual Property. One member shall be designated by the Vice President for Research as the Chair. A student shall also be appointed to the committee by the Vice President for Research.

9.2 Duties: The IPC shall:

(a) Provide advice to the MUSC Enterprise and FRD regarding implementation of this Policy, and undertake a periodic reciew of the Policy making recommendations for any revisions, if needed; FRD regarding implementation of this policy, and undertake a periodic review of

the Policy making recommendations for any revisions, if needed;

(b) Encourage compliance with this Policy through education of potential Creators of Intellectual Property, and through periodic meetings with those persons and entities responsible for implementation of this Policy.

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9.3 Meetings: The IPC shall meet as needed and at such other times as requested by the Vice President for Research, FRD, the Chair, or by at least 1/3 of the committee members.

9.4 Dispute Resolution Procedures

9.4.1 A Creator, FRD, or MUSC Enterprise administration can request the IPC mediate a dispute arising under this Policy.

9.4.2 If a mediated resolution amongst the parties is not obtained, the Committee can make a recommendation to the Vice President for Research for a resolution of the dispute.

9.4.3 Mediation of a dispute under this policy shall not be required and shall not be considered to be part of any required administrative remedies available to an employee or student of the MUSC Enterprise.

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8. CONTRACT DISPUTE RESOLUTION and FACULTY GRIEVANCE AND APPEAL

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The right to grieve and appeal by any member of the faculty is recognized by the administration and the Board. Presentation of grievances is made through the following procedures established by and for the faculty and approved by the administration and the Board of Trustees.

8.01 Faculty Appointment Contract Dispute Resolution

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The Faculty Appointment Contract (FAC) clarifies an individual's activities and responsibilities for the upcoming academic year and links the listed activities to compensation. These contracts are offered in good faith between the faculty member and the chair. They serve as a platform for discussing and resolving issues that could be misinterpreted between a faculty member and the chair. To assure collegial working relationships, the primary responsibility for resolving any dispute concerning the FAC lies with the faculty member and the department chair / division chief. However, some issues in a proposed FAC occasionally cannot be resolved at the department level.

The FAC signing period begins in early March and is to be completed by June 30. Any faculty member unwilling to sign his/her draft FAC may request a formal review and adjudication of the draft contract through their dean, who will make a formal request to the Office of the Executive Vice President for Academic Affairs and Provost. If the faculty member requests a review, the current FAC will be extended with appointment rights continued until July 31, by the Executive Vice President for Academic Affairs and Provost, or his/her designee. This should provide sufficient time for a review panel to gather facts and hear from those involved as needed to clarify issues in dispute. The review panel will be established by the Dean and be composed of faculty peers. The panel will have at least three senior faculty members, excluding department chairs or division directors, and may include faculty member(s) from another college. Panels are convened to review the issues and to render an opinion to the disputants, the Dean, and to the Executive Vice President for Academic Affairs and Provost. Each review panel member will sign a confidentiality

agreement in order to encourage the free sharing of opinions and facts. Panel members may recuse themselves for perceived conflict of interest. The Executive Vice President for Academic Affairs and Provost makes the final MUSC decision regarding the FAC being offered.

Both the faculty member and the chair or division directors shall have the opportunity to meet with the panel. The panel determines when to close fact-finding and hearing phases of the review and to begin deliberation. Following adequate deliberation on the issues, the panel shall submit a written recommendation to the disputants, the Dean, and the Executive Vice President for Academic Affairs and Provost. The Dean may mediate and resolve the dispute; however, if necessary, upon receipt of the Dean's comments on the Panel Report prior to July 31st., the Executive Vice President for Academic Affairs and Provost will provide the final written decision on the contested issue to all parties. If a resolution has not been achieved by July 31st, the Executive Vice President for Academic Affairs and Provost, or designee, can grant an additional extension to facilitate the resolution.

For FAC disputes, this policy recognizes: 1) the importance of timely resolution, and 2) faculty desire for peer review at the college level. The flow chart below outlines this policy. The general grievance policy in Section 8.02 covers FAC disputes and complaints that cannot be resolved as described above in 8.01.

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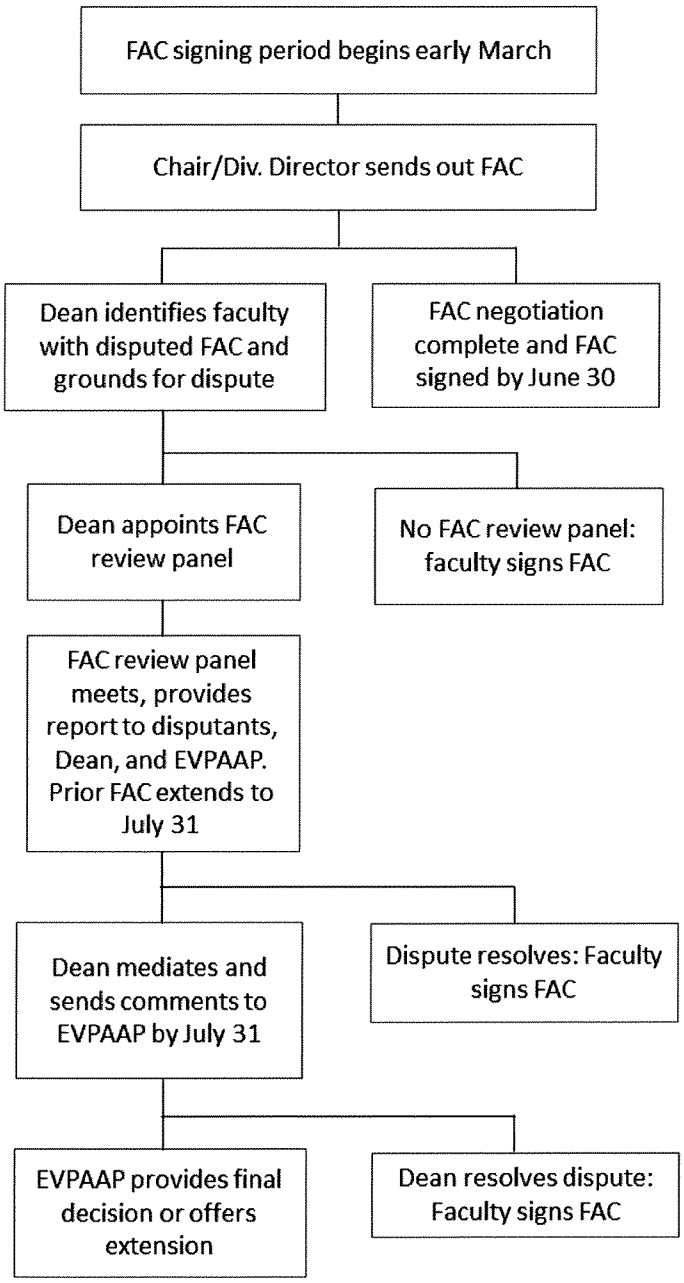
Faculty Appointment Contract (FAC)
Flow Chart



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8.02 Faculty Grievance and Appeal Procedure

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The general grievance policy in this section covers complaints that cannot be resolved in an informal way at the department or college level and which are not covered by other procedures.

In any community of free people, even under the best of circumstances, complaints will be generated from time to time by individuals or groups who feel that a condition exists that is detrimental to their professional careers or personal well-being.

A community of academicians operates on the premise that a complaint brought by one or more of its members against another or against the institution itself is best resolved when the parties involved are encouraged to seek a just and equitable solution.

When individual efforts fail to produce a satisfactory resolution of a complaint, it behooves the greater academic community to intercede so that an equitable solution is obtained with dispatch.

Therefore, a grievance and appeal procedure is established to handle complaints that cannot be resolved in an informal way at the department or college level and which are not covered by other procedures.

Participation in a grievance procedure in any capacity, including as a griever, within the scope of such grievance proceeding is considered by the University to be within the scope of duties of a faculty member. The faculty member shall be afforded the same protection for such participation as for any other faculty duties subject to the provisions of the liability insurance policies purchased to cover liability of faculty members.

The granting or the failure to grant tenured status to teaching and research faculty, professional librarians, academic administrators and all other persons holding faculty appointments or nonrenewal of employment contracts at the end of the contract term shall not be subject for consideration by this grievance procedure (Section 8-17-380, S.C. Code of Laws 1976). Section 8.01 governs resolution of faculty contract and post-tenure review disputes.

8.02.01 Initial Stage and Grievance Procedure

A complaint concerning any condition that is felt to be detrimental to the complainant's professional development or personal well being shall first be directed as described below:

1) Complaints against a member of the complainant's department shall be explained to the departmental chair. When the complaint is against the chair, it is lodged with the dean of the college.
2) Complaints against a member or chairman in the complainant's college, but not a member of the complainant's department, shall be lodged with the dean of the college.
3) Complaints against a member of another college shall be lodged with the dean(s) of the college(s) involved.
4) Complaints against any administrator shall be lodged with the next higher level of administration.

The person with whom the complaint is lodged shall attempt to mediate an amicable solution, or to suggest another person who might more effectively mediate an amicable solution.

8.02.02 Grievance Procedure

1) In the event that the complaint is not resolved within a reasonable period of time, the complainant may submit a written request for a hearing. The proper avenue for such a request is through established channels of authority to the Executive Vice President for Academic Affairs and Provost. Once initiated, a grievance or appeal must be afforded full due process regardless of changes in employment status.
2) The grievance or appeal shall be referred by the Executive Vice President for Academic Affairs and Provost to a Standing University Faculty Hearing Committee consisting of three (3) faculty members recommended by the Faculty Senate, three (3) faculty members recommended by the Provost's' Council, and one (1) faculty member selected by the Executive Vice President for Academic Affairs and Provost. The Committee may elect a chair, or may request that the Executive Vice President for Academic Affairs and Provost designate one of the seven individuals to be chair. Additional individuals who may be needed in case of a conflict of interest with a standing committee member will be selected from individuals representing each college and the Academic Affairs Faculty , who have received training in mediation. Faculty Senate and Provost's' Council may nominate individuals to receive mediation training and to serve in the Pool of potential Hearing Committee Members. This Pool (referred to as the Standing University Faculty Hearing Committee Pool) will be composed of one member from each college and the Academic Affairs Faculty nominated by the Faculty Senate, and one member from each college and the Academic Affairs Faculty nominated by the Provost's Council. Standing University Faculty Hearing Committee Pool members shall serve terms of up to three years, staggered such that there will be some continuity of membership from year to year.
3) The grievance or appeal shall be in writing and shall specify the condition(s) felt to be detrimental to the individual's professional development or personal well-being and the manner in which it/they may affect the complainant adversely. The statement shall specify the reason(s) why such a condition is/are felt to be the responsibility of a person or persons named in the grievance or appeal, and it shall suggest the changes in conditions that would satisfy the complainant.
4) Upon receipt of a grievance or appeal, and in no case longer than thirty (30) days after the receipt thereof, the Executive Vice President for Academic Affairs and Provost will

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convene a seven member Hearing Committee at full strength from individuals selected from the Standing University Faculty Hearing Committee pool.

8.02.03 Action by the Hearing Committee

1) When a grievance or appeal is referred to the Faculty Hearing Committee, the chair of the Committee shall distribute copies of all pertinent materials to the parties involved who have not already received them and to the members of the Committee within one week of the referral.

   The Committee shall refuse to hear a grievance or appeal if it determines that:

   a) The parties have made inadequate effort to resolve the dispute by discussion and agreement or have not utilized other reasonably available avenues for relief within the division, department, college(s);
   b) The dispute is patently frivolous or plainly without merit;
   c) The relief sought is beyond the power of the university to grant;
   d) The grievance is insufficiently related to the concerns of the academic community;
   e) The dispute is within the jurisdiction of another committee or unit of the university.

2) Within twenty-one (21) days of the distribution of the materials pertinent to the grievance or appeal, the Committee shall meet and decide whether to hear the case. If the Committee decides to hear the case, it shall immediately notify the principals and shall commence hearings within another seven (7) days. As it deems appropriate, the Committee may call any witnesses and examine any documents in addition to those presented by the parties to the grievance or appeal. The Committee shall prepare and keep a transcript of its proceedings.
3) After hearing the parties to the grievance or appeal and the witnesses, the Committee shall deliberate in executive session. It shall then determine to: (a) recommend an appropriate action or (b) dismiss the grievance. The chair shall send, in writing, the Committee's recommendation(s) to the parties. It shall then declare the hearing concluded.
4) The chair also shall send the Committee's recommendation(s) and rationale for it/them to the Executive Vice President for Academic Affairs and Provost of the university for consideration and recommendation by that officer. This report shall be submitted within ten (10) days after the conclusion of the hearing.
5) In preparing the written recommendations to the Executive Vice President for Academic Affairs and Provost, the Committee shall consider only the evidence presented at the hearing and such written and oral arguments as the Committee, in its discretion, may allow.
6) Under unusual and compelling circumstances, the Committee, with the concurrence of the Executive Vice President for Academic Affairs and Provost, may extend any deadlines upon written notification to the parties to the grievance or appeal.

8.02.04 Action by the Administration of the University

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Within thirty (30) days of the receipt of the Faculty Hearing Committee recommendations and rationale, the Executive Vice President for Academic Affairs and Provost of the university, who is ordinarily appointed by the President to act on her/his behalf, shall review the record and notify the parties to the grievance or appeal and the chair of the Faculty Hearing Committee of his/her recommendation in the case. In the event that the Executive Vice President for Academic Affairs and Provost has been a participant in the hearing of the aggrieved faculty member or for other valid reasons, the Executive Vice President for Academic Affairs and Provost may disqualify herself/himself and request the President to appoint another designee for said review.

If the Executive Vice President for Academic Affairs and Provost concurs in the recommendation of the Committee that is favorable to the faculty member, no further action in the matter may be taken. If the Executive Vice President for Academic Affairs and Provost either declines to accept a Committee recommendation that is favorable to the faculty member, or concurs in a Committee recommendation that is unfavorable to the faculty member, the faculty member may appeal to the Board for review. The appeal shall be submitted in writing to the Secretary of the Board within ten (10) days following the decision of the Executive Vice President for Academic Affairs and Provost who ordinarily acts as the designee of the President. It shall state the decision complained of and the redress desired.

8.02.05 Action by the Board

The appeal shall be placed on the next regular Agenda of the Board for the consideration of the Board.

The Board in its sole discretion may grant a review, but if granted the Board shall not be required to conduct an additional hearing or hear arguments of the faculty member or counsel but may review the record of the proceedings. The Board, at its discretion, may elect to hear arguments, oral or written, by both of the principals or their representatives and may consult with the hearing Committee.

Any action taken by the Board shall be final.

8.02.06 Definition of Rights and Challenges in a Grievance Procedure

1) Challenge of Committee Members:
   a) Upon the request of a party to a grievance, a member of the Committee may be removed from considering a case if deemed biased or in conflict of interest. If a member of the Committee refuses to remove herself/himself when challenged for such cause, the challenging party may appeal to the entire Committee who shall make a final determination of the challenge. A Committee member may disqualify herself/himself.
   b) If s/he so desires, each party shall have, in addition, a challenge without stated cause. A member so challenged shall not consider the case.
2) To Present Witnesses and Supporting Materials:

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Each party involved in a grievance or appeal may:

a) submit any written materials in support of his/her position;
b) present witnesses at hearings.

3) To Have an Advisor During the Hearing:
   a) Each party to a grievance or appeal may be accompanied in the hearing by a non-participating advisor of his/her choice and may consult with the advisor throughout the hearing.
   b) If any party chooses to have participating legal counsel present, written notification must be presented to the chair of the Committee at least five (5) days before the hearing. The chair shall then promptly notify the other parties. The Hearing Committee conducts an internal administrative review, rather than a legal proceeding. Legal counsel may advise, but may not participate in the hearing. The Committee chair, in consultation with University General Counsel, may remove any advisor from the hearing should said advisor persist in attempts to participate in the hearing [rather than to render advice to any participant(s)].
4) To Have an Observer Attend Hearings:

At the request of any party to a grievance or appeal, or at the request of the Committee hearing the case, a representative of a responsible professional or educational association shall be permitted to attend hearings as an observer. The chair will determine the qualifications and responsibility of the association.

8.02.07 Access to Records of Hearings

1) A written record shall be made of the proceedings during hearings.
2) Each party to a grievance or appeal shall have access to all records of the hearing and, should s/he request it, shall be furnished, upon payment of reasonable charges for transcription or reproduction, a record of the proceedings. (A copy of the official record of the proceedings, in whatever form it is made, shall satisfy this requirement.)

8.02.08 To Receive Expeditious Consideration

1) The parties to any grievance or appeal have the right to expeditious consideration at all stages of these procedures.
2) The Hearing Committee is expected to formulate its written recommendation(s) and to communicate it/them to the parties to the grievance or appeal within ten (10) days of the conclusion of the hearing.

8.02.09 Annual Report of the Chair of the Hearing Committee

Each July the chair of the Hearing Committee shall make a summary of formal grievance and appeal activities and statistics on cases in progress and those settled during the preceding year. S/he shall send this report to the President of the Faculty Senate, the Executive Vice President for Academic Affairs and Provost, and to the President of MUSC.

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9. FACULTY SEPARATION

9.01 Criteria for Termination of Tenured Faculty

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Tenure terminates when a faculty member resigns or retires. Tenure may also be terminated for cause. Cause includes one or more of the following:

a) Neglect or refusal to perform the duties and responsibilities of the academic rank to which the faculty member is appointed, or performance below the standards generally accepted for the rank.
b) Conduct seriously prejudicial to the Medical University of South Carolina through infraction of the law, moral turpitude, or infraction of commonly accepted standards of behavior in academic and professional communities.
c) Inability to perform the usual duties because of physical or mental incapacities. Terminations for medical reasons must be based upon clear and convincing medical evidence.
d) Documented evidence of financial exigencies or need for curtailment or discontinuance of programs, departments, colleges or positions. The administration shall seek appropriate faculty input in arriving at such decisions and shall observe every effort to make suitable reassignments of displaced personnel. In such decisions, appropriate weight will be given to seniority of service. The place of any faculty member so released shall not be filled within a period of two years, unless the released faculty member has been offered reappointment and has declined or failed to respond within a specific and reasonable period of time.

In instances involving termination for cause, the faculty member has the right to appeal through the Faculty Grievance and Appeal Procedure (Section 8.02).

9.02 Procedures for Termination of Tenured Faculty

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

The President may remove a faculty member for cause at any time, including termination or removal prior to hearing. Should such action be taken, the President shall implement a full

hearing pursuant to the grievance procedure within sixty (60) days of said removal. Prior to the presentation of notice of dismissal, discussions concerning mutually agreeable settlement may be held through the organized administrative structure between the faculty member and the administrative officer(s) as designated by the President. Except for summary termination or removal by the President, termination of tenure for cause, unless waived by the faculty member involved, will be preceded by the following:

1) For termination pertaining to:

a. Quality of work - please refer to Section 5.05 Post Tenure Review.

This procedure serves as the initial stage of the Faculty Grievance and Appeal Procedure. Referral to the Executive Vice President for Academic Affairs and Provost will actuate the Grievance Procedure.

b. Prejudicial conduct and for precedence for rectifying the situation - the appropriate dean shall meet with the faculty member to discuss the nature of the conduct. The President may suspend the faculty member until the consequences of due process have been accomplished. A written summary of the meeting shall be provided to the faculty member who must abide by its terms. Failure of the dean to reach accord with the faculty member, or failure of the faculty member to meet the terms of the summary, shall result in the matter being referred to the Executive Vice President for Academic Affairs and Provost.

c. Incapacity - the department chair shall meet with the faculty member to document the nature and extent of the incapacity and forward a copy of the documentation to the dean, who shall refer the matter through appropriate channels to the Executive Vice President for Academic Affairs and Provost.

d. Abolition or discontinuance of positions or programs - the President of the University through Executive Vice President for Academic Affairs and Provost notifies the dean of the college concerned of such exigencies. Written notice of termination, through appropriate channels, is given to the faculty member(s) involved by the respective dean. Such notice is given at least twelve months in advance of the termination, to the extent that appropriated funds are available and legislation permits. Prior to the written termination notice, the dean and the Executive Vice President for Academic Affairs and Provost will have made reasonable efforts to place the faculty member(s) in any existing faculty vacancies within the university, consistent with the faculty member's qualifications and area of expertise. The faculty member(s) shall have a right to a hearing under the Faculty Grievance and Appeal Procedure.

Procedures a) through c) serve as the initial stages of the Faculty Grievance and Appeal Procedure. Referral to the Executive Vice President for Academic Affairs and Provost will actuate the Grievance Procedure

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2) Until a final decision concerning termination of tenure has been reached, the appropriate dean and the Executive Vice President for Academic Affairs and Provost, upon approval by the President, may suspend or assign the faculty member to other duties. Before suspending a faculty member, the dean shall consult with the Appointment, Promotion and Tenure Committee of his/her college. A faculty member who has been suspended will suffer no loss of salary unless his/her appointment is duly terminated, in which event the, subject to the approval of the President and the Board, will determine the date of termination. In determining the date, the Executive Vice President for Academic Affairs and Provost may take into account the length and quality of service of the faculty member.

9.03 Non-reappointment and Termination of Non-Tenured Faculty

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	
Sep 2019	Oct 2019	Sep 2019	Dec 2019	Jan 2020	

Unless otherwise stated by a written contract of appointment, all non-tenured faculty members are under contract for one (1) year from the date of their employment with the department. For appointments other than 12-months, the contract period shall be stated in writing at the time of appointment or employment.

State legislation (S.C. Code of Laws, as amended, Section 8-17-380) (http:www.scstatehouse.gov/code/t08c017.php) provides that non-renewal of employment contracts at the end of the contract term is not grievable by the mechanism outlined in the Code.

Written notice of the intention not to renew the appointment of a non-tenured faculty member shall be given, to the extent that appropriated funds are available and legislation permits, as follows:

1) At least three (3) months prior to the expiration of the most recent contract for faculty with the Medical University if the initial contract was for a one (1) year term.
2) At least six (6) months prior to the expiration of the most recent contract for faculty appointed under a second-year contract with the department. Previous service to the university to other departments or capacities is calculated for notice purposes).
3) At least one (1) year prior to the expiration of the most recent contract for faculty under a third (3rd) year or subsequent-year contract with the department.

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9.04 Dismissal For Cause Before the End of a Specific Contract Period for Non-Tenured Faculty

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Cause or grounds for dismissal of a non-tenured faculty member before the end of a specific contract period are the same as those set forth for revocation of tenure (see Section 9.02, Procedures for Termination of Tenured Faculty).

9.05 Resignation

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Under ordinary circumstances, a faculty member is expected to fulfill his or her contractual obligations to the university. Letters of resignation requesting release from those contractual obligations prior to the end of a contract period may be accepted by the appropriate department chair or administrator if such actions are mutually acceptable. In the event the resignation is not accepted by the university, the faculty member shall complete his or her contractual service for the year in question. Faculty members who plan to leave university employment at the end of a contract period shall give sufficient notice and clear all financial and other obligations.

9.06 Retirement

Senate Approval Date	Provost's Council Approval Date	Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

Information regarding eligibility and procedures for retirement are contained in https://web.musc.edu/human-resources/university-hr

10. UNIVERSITY HUMAN RESOURCES POLICIES

10.01 Faculty Leave and Authorized Absences

Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Mar 2018	Apr 2018	May 2018	
June 2019	Not Required	July 2019	

10.01.01 Leave with Pay

Annual Leave

Eligible full-time faculty members accrue 176 hours of annual leave (22 working days) per fiscal year (July 1 – June 30). Leave is accrued on a monthly basis provided the faculty member is in a pay status for at least one-half of the workdays of the month. Faculty members continue to accrue annual leave while on annual leave, sick leave or other authorized leave with pay. No leave is accrued if the faculty member is in a leave without pay status. The maximum amount of unused annual leave that may be carried over into a new fiscal year (July 1- June 30) is 360 hours (45 days).

Eligible part-time faculty, with a twelve-month contract will accrue proportionate annual leave benefits based on the percentage of time worked. As with full-time faculty, the maximum amount of unused leave that part-time faculty may carry over into a new fiscal year is 360 hours (45 days).

Eligible faculty with nine-month contracts are entitled to accrue and use annual leave during the period of their contract. The amount of accrual will be 75% (16.5 days) of the amount accrued by full-time twelve-month faculty. As with other faculty, 360 hours (45 days) is the maximum amount of unused leave that faculty with nine-month contracts may carry over into a new fiscal year.

As far as possible, leave shall be scheduled in accordance with the preference of the faculty member. However, leave shall be approved by the appropriate supervisor/administrator to assure efficient operation. Recognizing the nature of academic responsibility and the high priority of class scheduling, faculty may be granted annual leave before it is earned.

Faculty members may use up to a maximum of 240 annual leave hours (30 days) in any one fiscal year, at the department's discretion

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Twelve-month faculty (full & part-time) who leave the employment of MUSC who have unused annual leave are entitled to a lump-sum payment for such leave not to exceed 360 hours (45 days), to be calculated as follows:

University hourly rate multiplied by number of hours of accrued, unused annual leave. Earnings are taxed as extra income per IRS regulations. Contact the HR Benefits office to discuss the option of deferring a portion of the payment to an approved supplemental retirement account.

Official Holidays

Holidays observed by the University in accordance with State regulations, can be found at the following link:

https://horseshoe.musc.edu/human-resources/univ/employee-corner/leave/holidays. If conditions preclude taking the holiday at the prescribed time, comparable time must be taken within one year; there is no provision for payment for earned but unused holidays.

Sick Leave

Eligible full-time faculty members accrue sick leave at the rate of 10 hours per month on a calendar year basis for a total of 15 working days. Leave is accrued provided the faculty member is in a pay status for at least one-half of the workdays of the month. Faculty members continue to accrue sick leave while on annual leave, sick leave or other authorized leave with pay. No leave is accrued if the faculty member is in a leave without pay status. The maximum amount of unused sick leave that may be carried over into a new fiscal year is 1,440 hours (180 days). Eligible part-time faculty, working 50% of the time or more, will accrue sick leave on a prorated basis.

Leave Donation

Excess sick leave may be donated to the MUSC Catastrophic Leave Program (Please refer to HRM Policy #48, Catastrophic Leave Program).

Faculty may also donate annual leave to the catastrophic leave pool, as long as the eligibility requirements are met. Faculty annual leave donations will be designated for faculty annual leave requests. The department of the requesting faculty member should ensure that the leave recipient does not receive or use transferred annual leave from the pool after the personal emergency ends, and HR should be notified immediately.

For Additional information, see the following links:

University HR Policies

10.01.02 Extended Leave without Pay

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Extended leaves of absence without pay may be granted by the President, through regular administrative channels, under circumstances wherein the best interests of MUSC would be served through granting such leave. Authorization may be considered in such cases as:

(1) Absence for advanced academic training, research, or other experience which leads to increased competence and promotes the interests of the Medical University as well as those of the faculty member, and

(2) Absences due to prolonged illness or for personal reasons when such absences extend beyond available annual leave or sick leave. Sick leave must be exhausted first before leave without pay is granted. Normally, the total period of absence will not exceed six months (including up to 480 hours approved under FMLA for qualified conditions) and may be granted in increments depending on the circumstances.

The granting of leave-without-pay is a matter of administrative discretion. The administrative channels for request for leave-without-pay shall be the same as for other faculty actions.

Although sick leave or annual leave does not accrue during periods of leave-without-pay, the accumulated leave balances are not forfeited.

A member of the faculty who has acquired tenure shall retain tenure during any period of leave; however, time served on leave-without-pay may not be counted toward acquiring a sabbatical leave.

10.01.03 Family and Medical Leave Act

A faculty member who has worked for a State of South Carolina employer for 12 months or more and has worked at least 1,250 hours during the preceding 12 months, may be eligible for Family and Medical Leave.

See HR Policy #30 (Family Medical Leave Act)

10.01.04 Authorized Absences

Sabbatical Leave

See Section 6.01 Sabbatical Leave

Attendance in Court

When a faculty member is a voluntary witness in litigation as an individual, and not in an official capacity, the time taken from work shall be charged as annual leave or leave-without-pay, as appropriate.

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When, in obedience to a subpoena or other legal direction by proper authority a faculty member appears to testify, serve as a witness, or serve on a jury for the Federal Government, the State of South Carolina or one of its political subdivisions, the faculty member shall be granted leave-with-pay for the necessary period of time which shall be recorded as Administrative Leave.

Death in Family

Supplemental leave (with pay) may be authorized by the department for a death in the family. This leave, which shall not exceed three consecutive working days, may be granted in the case of death of the following relatives of the faculty member, or legal spouse of the employee:

- Spouse
- Parents
- Legal Guardians
- Brothers or Spouse of Brothers
- Sisters or Spouse of Sisters
- Children or Spouse of Children
- Grandparents or Great-Grandparents
- Grandchildren or Great-Grandchildren

Voting

Each faculty member who is eligible to vote in a South Carolina primary or general election will be authorized up to two hours leave for voting. If possible, voting should be done before or after work.

Military Leave

In accordance with State Law, a faculty member is entitled to a maximum of 15 work days of paid leave in any one calendar or fiscal year for active duty training with the South Carolina National Guard or one of the Reserve units of the Armed Forces of the United States. These 15 days need not be consecutive and may be used intermittently throughout the year. Insofar as possible, such training should be arranged to be of least interference with regular academic, research or clinical commitments.

In the event a faculty member is called upon to serve during an emergency ordered by the Governor or the Armed Forces concerned, s/he shall be entitled to an additional leave of absence with pay not to exceed 30 working days.

A faculty member is normally entitled to leave-without-pay during an extended period for up to five years for active military duty. After such leave, the faculty member may return to active employment with MUSC in a comparable position to the one held at the time

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such leave was granted, in accordance with the MUSC Military Leave Policy and the Uniformed Service Employment and Reemployment Rights Act (USERRA).

Assault by Patient

Covered employees who are temporarily disabled as a result of an assault by a patient or client are entitled to the use of supplemental leave with pay during the period of disability.

Donating Blood

Supplemental leave for blood donation is limited to four (4) hours. A department head may require documentation of the donation.

10.01.05 Academic Time

Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Mar 2018	Apr 2018	May 2018	
June 2019	Not Required	July 2019	

Time related to professional development, conferences, off-site work activities are not charged as leave; however, it is required to be documented for insurance and liability purposes. As far as possible, leave shall be scheduled in accordance with the preference of the faculty member. However, leave shall be approved by the appropriate supervisor/administrator to assure efficient operation.

10.02 Faculty Benefits

Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Mar 2018	Apr 2018	May 2018	
June 2019	Not Required	July 2019	

Faculty members who resign, retire, or for other reasons terminate their employment with MUSC must contact the Department of Human Resources Management concerning the action they need to take with regard to the following: a) Retirement, b) State Health, Dental

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and Vision Insurance, c) State Optional or Dependent Life Insurance, d) Supplemental Long Term Disability and flexible spending accounts, e) Tax Sheltered Annuities, and d) Deferred Compensation Plans.

Faculty employed by MUSC-affiliated institutions or organizations, such as VA Medical Center or MUSC Physicians, should refer to their Human Resource Management policies for eligible benefits.

10.02.01 General Employment Benefits

For information related to the core State benefits provided by the University, contact MUSC Human Resources Management at 843-792-2071, opt 4 or benefits@musc.edu. Contact information for counselors can be found on the directory. http://horseshoe.musc.edu/human-resources/univ/benefits/contacts

For assistance with supplemental benefits offered to clinical faculty by MUSC Physicians, contact MUSC Physicians at 843-852-3100 or muscpbenefits@musc.edu.

To find an overview of benefits go to:

University: http://academicdepartments.musc.edu/hr/university/benefitsMUSC
Physicians: **http://horseshoe.musc.edu/human-resources/muscp/benefits**

Additional Perks and Discounts:

Other Benefits- Perks and Discounts

The comparison between University and MUSC Physicians benefits is located at the following link:

Faculty Benefits
(http://academicdepartments.musc.edu/hr/university/benefits/faculty%20benefits.htm)

10.02.02 Liability Insurance

Pursuant to State law, faculty members and other employees are insured for all activities within the scope of their duties for MUSC. This State mandated insurance coverage is provided through the South Carolina Insurance Reserve Fund. Specific information regarding coverage may be obtained from the Office of University Risk Management.

If an event occurs which may expose a health provider or the institution to a claim or legal action, notify the University Risk Management office immediately. They will, in turn, notify appropriate persons in the affected areas and hospitals.

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10.03 Nepotism

Nepotism

10.04 Employee Health Screening Policy and Criteria

Employee Health Services

10.05 Criminal Record Searches

Criminal Record Searches

10.06 Drug Free Workplace

Drug-Free Workplace

11. GENERAL POLICIES AFFECTING FACULTY

Provost's Approval Date	Board of Trustees Approval Date	Reviewed for Accuracy and Consistency	Related Compliance Information
Mar 2018	Apr 2018	May 2018	
Oct 2018	Not Required		
June 2019	Not Required	July 2019	

11.01 Affirmative Action

https://education.musc.edu/leadership/diversity/equal-employment

11.02 Infectious Diseases

Bloodborne Pathogen Protocols:

http://horseshoe.musc.edu/everyone/health-wellness/employee-health/bloodborne-pathogen-exposures

Infectious Disease Exposure Questionnaire:
http://horseshoe.musc.edu/~/media/files/services-all-files/health-wellness-files/employee-health-files/infectious-disease-exposure-form-all-diseases.pdf?la=en

Personal Protective Equipment Policy:

https://horseshoe.musc.edu/~/media/files/univ-files/risk-management-files/updated-forms/personal-protective-equipment-policy.pdf?la=en

11.03 Sexual Harassment Policies

https://education.musc.edu/leadership/diversity/title-ix

11.04 Use of the University Name, Seal, or Logos

https://web.musc.edu/about/leadership/institutional-offices/communications/brand

11.05 Computer Use Policy

https://web.musc.edu/ocio/policies/cup.pdf

11.06 Emergency / Disaster Preparedness

https://research.musc.edu/resources/doing-research/policies/disaster-preparedness-policy

11.07 MUSC Honor Code

Faculty members who suspect that conduct constituting a violation of the Honor Code occurred in academic work overseen by them are required to immediately report the violation to the Honor Council. The matter will be handled in accordance with MUSC's Honor Code, rather than direct action by the faculty member. The faculty will honor the decision and sanction imposed by the Honor Council related to the suspected violation. The faculty retain the responsibility for assessing the quality of the academic work using an objective assessment. If the Honor Council determines no violation occurred the objective grade for the assignment will be upheld.

http://www.musc.edu/honorcode

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Code of Conduct

This Code of Conduct establishes guidelines for professional conduct by those acting on behalf of the Medical University of South Carolina, its agents or affiliates (including but not limited to the Medical University Hospital Authority, MUSC Physicians, Carolina Family Care, the MUSC Foundation, and the Foundation for Research and Development hereafter, collectively referred to as "MUSC"), including executive officers, faculty, staff, and other individuals employed by MUSC using MUSC resources or facilities, and volunteers and representatives acting as agents of MUSC (hereafter collectively referred to as "employees"). This Code of Conduct is not an attempt to define everything one should and should not do, but to communicate MUSC's expectations of proper conduct and what professional conduct MUSC values.

MUSC has the expectation of each employee to conduct all activities in compliance with all applicable laws and regulations and with the utmost ethical integrity. While the information that follows in this section is not all inclusive, it is indicative of important activities involving MUSC employees in their daily business and workplace operations.

Those acting on behalf of MUSC have a general duty to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of MUSC and take no actions incompatible with their obligations to MUSC. Employees shall adhere to the applicable laws, rules, regulations and policies of governmental and institutional authorities. The failure to do so will be grounds for disciplinary action, up to and including termination of employment.

Employees are responsible for reporting any activity reasonably believed in violation of a law, rule, regulation and/or policy. This can be done through the employee's chain of command, the Compliance Office, the Office of Internal Audit, or via the Confidential Hotline (toll-free, available 24 hours a day, seven days a week). MUSC will neither discriminate nor retaliate against any employee who reports in good faith any instance of conduct that does not comply or appear to comply with laws, rules, regulations and/or policies.

Ethical Standards

South Carolina Code (S.C. Code § 8-13-10 et seq.) (the "Ethics Law") makes it unlawful for public officials, public members, and public employees to use their position to obtain an economic interest or to have a financial interest in most any contract or purchase connected with MUSC/MUHA, unless certain exceptions apply. No provision of this policy supersedes the Ethics Law. The South Carolina Ethics Law can be found in its entirety on the South Carolina Legislature's website.

Some general ethical standards that apply to MUSC employees are:

- No employee shall accept or solicit any gift, favor, or service that might reasonably appear to influence the employee in the discharge of duties.
- No employee shall disclose confidential information or use such information for his or her personal benefit.
- No employee shall make personal investments that could reasonably be expected to create a conflict between the employee's private interest and the public interest.

- No employee shall accept other outside or dual employment or compensation that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's public duties.
- Sexual misconduct and sexual harassment are unacceptable behaviors. This includes verbal or physical conduct of a sexual nature.
- No employee shall misrepresent themselves or the institution in any way. This includes, but is not limited to, clinical or research documentation, submission of claims for reimbursement, submission of timesheets, and advertising of services.

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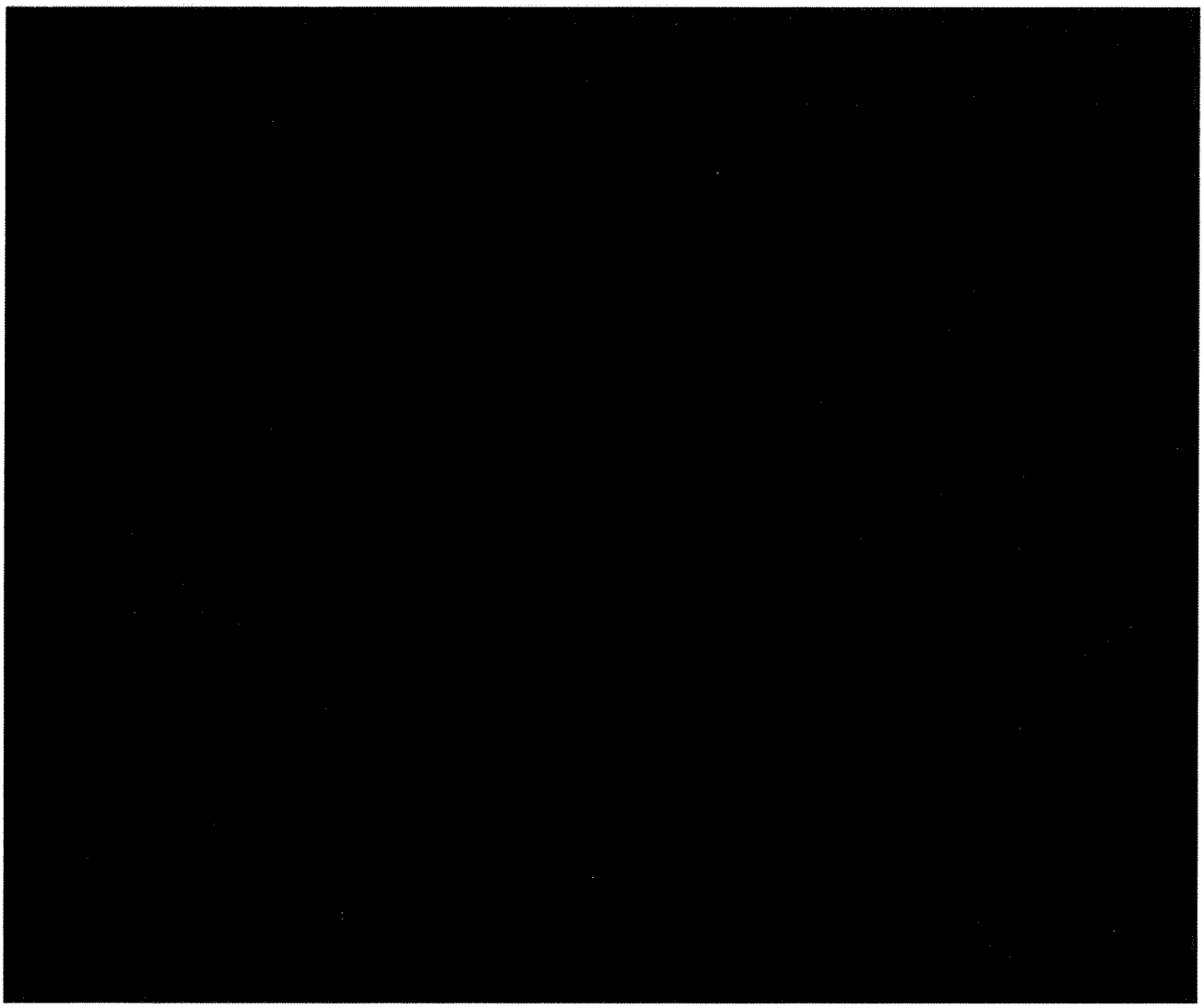
From: Brisbin, Andrea <brisbina@musc.edu>
Sent: Tuesday, October 26, 2021 2:08 PM
To: Jones, Celeste; Klett III, William; Oken, Melissa
Subject: FW: Hornig Cards
Attachments: hornig endo sinus bx.doc; hornig esophageal dilation.doc; hornig facial mass.doc; hornig flap debulking.doc; hornig fom.doc; hornig free flap.doc; hornig glossectomy.doc; hornig glossmandible.doc; hornig laryngectomy.doc; hornig laser laryngectomy.doc; hornig lip wedge.doc; hornig lymph node bx.doc; hornig mandible fx.docx; hornig maxillectomy.docx; hornig neck dissection.doc; hornig orbital fx.doc; hornig Parotid RECON.docx; hornig parotidectomy.doc; hornig pec flap.doc; hornig quadroscopy.docx; hornig scalp lesion.doc; hornig septoplasty.doc; hornig Simple Intraoral excision.doc; hornig substernal thyroid.docx; hornig tep.doc; hornig thyroid.doc; hornig tonsil.docx; hornig trach.docx; hornig cathopexy-browlift.doc; hornig debridement of bone.doc; Hornig DL.docx



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intended recipient, you are hereby notified that any disclosure, dissemination, distribution, or copying of this communication is strictly prohibited.

From: Wilsgard, Jamie
Sent: Tuesday, September 14, 2021 11:07 AM
To: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Subject: Hornig Cards

Thank you,

Jamie Wilsgard BSN RN
Clinical Coordinator, Main Operating Room
ENT/OMFS/Plastic Surgery
Medical University of South Carolina
UE Room 427
Office: 843-792-8742
Fax: 843-792-0753
musc.edu

If you have received this communication in error, please notify the sender immediately. The documents accompanying this facsimile/electronic transmission contain confidential information intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If the reader of this message is not the intended recipient, or an employee responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, distribution, or copying of this communication is strictly prohibited.

From: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Sent: Monday, September 13, 2021 12:12 PM
To: Wilsgard, Jamie <adaja@musc.edu>
Subject: New Contact Info

CAUTION: External

Hi!
I finally made it to my desk to send you my information!!! Thank you so much for the help!

Fay Whitehead, MSN, RN, CNOR
Trident Medical Center
Operating Room, PACU, & Central Sterile Manager
O: 843-847-4819
C: 843-209-0267
E: rebecca.whitehead@hcahealthcare.com

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From: Brisbin, Andrea <brisbina@musc.edu>
Sent: Tuesday, October 26, 2021 2:09 PM
To: Jones, Celeste; Klett III, William; Oken, Melissa
Subject: FW: Lentsch Cards
Attachments: Intraoral Resection without Bone.docx; Laryngoscopy, Esophogoscopy, Panendo Simple.docx; Local Flap.docx; Major Intra Oral Resection with Bone.docx; mandible fx.docx; Maxillectomy with Obturator.docx; Minor Soft Tissue Excision.docx; Neck Procedures.doc; Open Total Partial Laryngectomy, Pharyngectomy.docx; orbital fx.doc; Parotid.docx; Partial Rhinectomy.docx; Scalp Resection.docx; Sialendoscopy.docx; TEP.docx; Thyroid, Parathyroid.docx; Tonsillectomy.docx; trach.docx; transoral laser.docx; uppp.doc; Zenkers Repair.docx; DISE.docx; Eagles.docx; FESS-Intranasal Case.docx; Inspire.docx

[EXTERNAL EMAIL]

[redacted]

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From: Wilsgard, Jamie
Sent: Tuesday, September 14, 2021 11:07 AM
To: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Subject: Lentsch Cards

Thank you,

Jamie Wilsgard BSN RN
Clinical Coordinator, Main Operating Room
ENT/OMFS/Plastic Surgery
Medical University of South Carolina
UE Room 427
Office: 843-792-8742
Fax: 843-792-0753
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From: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Sent: Monday, September 13, 2021 12:12 PM
To: Wilsgard, Jamie <adaja@musc.edu>
Subject: New Contact Info

CAUTION: External

Hi!
I finally made it to my desk to send you my information!!! Thank you so much for the help!

Fay Whitehead, MSN, RN, CNOR
Trident Medical Center
Operating Room, PACU, & Central Sterile Manager
O: 843-847-4819
C: 843-209-0267
E: rebecca.whitehead@hcahealthcare.com

ELECTRONICALLY FILED - 2021 Nov 22 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

From: Brisbin, Andrea <brisbina@musc.edu>
Sent: Tuesday, October 26, 2021 2:09 PM
To: Jones, Celeste; Klett III, William; Oken, Melissa
Subject: FW: Neskey Cards
Attachments: Neskey Local Flap.docx; Neskey mandible fx.docx; Neskey Maxillectomy.docx; neskey orbital fx.doc; Neskey Paritod.docx; Neskey Thyroidectomy.doc; Neskey Trach Resection.docx; Neskey trach.docx; Open Total Partial Laryngectomy, Pharyngectomy.docx; scalp excision.docx; Simple Intraoral Resection without Bone.docx; Substernal Thyroid.docx; Tonsillectomy.docx; Zenkers Repair.docx; Major Intra Oral Resection with Bone.docx; Minor Soft Tissue Excision.docx; Neck Procedures.doc; Neske Direct Laryngoscopy.docx; Neskey Esoph Dilation.docx; Neskey FESS-Intranasal Case.docx

[redacted]

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From: Wilsgard, Jamie
Sent: Tuesday, September 14, 2021 11:07 AM
To: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Subject: Neskey Cards

Thank you,

Jamie Wilsgard BSN RN
Clinical Coordinator, Main Operating Room
ENT/OMFS/Plastic Surgery
Medical University of South Carolina
UE Room 427
Office: 843-792-8742
Fax: 843-792-0753
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From: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Sent: Monday, September 13, 2021 12:12 PM
To: Wilsgard, Jamie <adaja@musc.edu>
Subject: New Contact Info

CAUTION: External

Hi!
I finally made it to my desk to send you my information!!! Thank you so much for the help!

Fay Whitehead, MSN, RN, CNOR
Trident Medical Center
Operating Room, PACU, & Central Sterile Manager
O: 843-847-4819
C: 843-209-0267
E: rebecca.whitehead@hcahealthcare.com

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From: Brisbin, Andrea <brisbina@musc.edu>
Sent: Tuesday, October 26, 2021 2:08 PM
To: Jones, Celeste; Klett III, William; Oken, Melissa
Subject: FW: Day Cards
Attachments: day-excision of lesion.doc; day-flap.doc; day-glossectomy.doc; day-glossmandible.doc; Day-Hemiglossectomy.doc; day-laryngectomy.doc; day-laser laryngectomy.doc; day-local advancement flap.doc; day-mandible fx.doc; day-mandibulectomy.doc; Day-maxillectomy.doc; Day-neck dissection.doc; day-oral cavity biopsy.doc; day-orbital ex.doc; Day-panendo.esoph dilation.doc; Day-parotid.doc; day-partial rhinectomy.docx; Day-scalp resection.doc; day-sentinel node.doc; day-tep.doc; day-thyroid.doc; day-tonsil.doc; day-trach.doc; Vandergrift - crani with ENT.docx; day - orbital fx .docx; day-bone debridement.doc; day-CARDS procedure.doc; day-carotid resection.doc; day-check resection.doc; day-debridement of mandible.doc; day-ees.doc

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intended recipient, you are hereby notified that any disclosure, dissemination, distribution, or copying of this communication is strictly prohibited.

From: Wilsgard, Jamie
Sent: Tuesday, September 14, 2021 11:06 AM
To: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Subject: Day Cards

Thank you,

Jamie Wilsgard BSN RN
Clinical Coordinator, Main Operating Room
ENT/OMFS/Plastic Surgery
Medical University of South Carolina
UE Room 427
Office: 843-792-8742
Fax: 843-792-0753
musc.edu

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From: Whitehead Fay <Rebecca.Whitehead@hcahealthcare.com>
Sent: Monday, September 13, 2021 12:12 PM
To: Wilsgard, Jamie <adaja@musc.edu>
Subject: New Contact Info

CAUTION: External

Hi!
I finally made it to my desk to send you my information!!! Thank you so much for the help!

Fay Whitehead, MSN, RN, CNOR
Trident Medical Center
Operating Room, PACU, & Central Sterile Manager
O: 843-847-4819
C: 843-209-0267
E: rebecca.whitehead@hcahealthcare.com

ELECTRONICALLY FILED - 2021 Nov 22 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

To: Logue Barry[barry.logue@hcahealthcare.com]
From: Hornig, Joshua D.[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=42EA7AFF6CC54FC7B087D3562CE1D2EB-HORNIGJD]
Sent: Thur 9/16/2021 8:59:13 AM (UTC-04:00)
Subject: Fwd: Instrument Sets
ADULT LARYNGOSCOPY SET.pdf
ENT 0DEG 4MM TELESCOPE.pdf
ENT FINE ACCESSORY SET.pdf
ENT FINE SOFT TISSUE.pdf
ENT MICROVASCULAR ACCESSORY FORCEPS.pdf
ENT MICROVASCULAR CLAMP SET.pdf
ENT MICROVASCULAR INSTRUMENTS.pdf
ENT ORAL TUMOR SET.pdf
ENT SOFT TISSUE SET.pdf
FLAP SET.pdf
PLASTICS COUPLER SET.pdf
SALIVARY ACCESSORY SET.pdf
SALIVARY SCOPE SET.pdf
SEPTORHINOPLASTY SET.pdf

Sincerely,
Joshua D Hornig MD FRCS(C)

Associate Professor
Head & Neck Surgical Oncology

Begin forwarded message:

From: "Wilsgard, Jamie" <adaja@musc.edu>
Date: September 10, 2021 at 11:32:31 AM EDT
To: "Hornig, Joshua D." <hornigjd@musc.edu>
Subject: Instrument Sets

Let me know if you don't see something you need.

Thank you,

Jamie Wilsgard BSN RN
Clinical Coordinator, Main Operating Room
ENT/OMFS/Plastic Surgery
Medical University of South Carolina
UE Room 427
Office: 843-792-8742
Fax: 843-792-0753
musc.edu

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To: Day, Terry[dayt@musc.edu]
Cc: Thies, Paula[thiespa@musc.edu]
From: Mulbry, Makenzie[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=29A1C6ACB4BA4E5690375BAD8E8994BB-BRAISM]
Sent: Tue 5/11/2021 9:52:08 AM (UTC-04:00)
Subject: RE: FY22
6. H&N RVUS.xlsx

Dr. Day,

Attached is a spreadsheet for your review with two tabs - "H&N RVU's" and "Day."

"H&N RVU's" shows the RVU's for you, Graboyes, Hornig, and Lentsch. Unfortunately, I cannot pull date for other providers in different departments. Funds flow started in FY18, therefore I cannot go back 10 years but I went back as far as I could. 2021 shows # of RVU's through May. I added a column to the right annualizing 2021 FYTD.

"Day" tab shows your salary for the last 10 years broken down by MUSC/MUSCP/incentive. FY12-FY20 lists the salary you were actually paid, not what was listed on your contract. FY21 (current year) lists your contract amount which is usually higher than what is paid out because the contract includes all of your at-risk. Until year end payments are made, I will not know what you should expect to receive as total comp for FY21.

FY22 is an ESTIMATE at this time because we do not have salary approval yet from the Dean's office. Note that your HCC funding is ending, so regardless of the change in Practice Plan, your salary would have decreased by that amount (~$85,000). In addition, the RVU estimate includes the adjustment for CMS. So the number is higher compared to the previous years.

I want to reiterate that it is hard (if not impossible) to compare FY22 to previous years because it would be comparing apples to oranges. Between the CMS adjustments, changing your division to the Head & Neck benchmarks, the change in practice plan, and your HCC money ending, you cannot simply compare total compensation and # RVU's from previous years. Because of all of these reasons, when you look at the graphs on the spreadsheet it appears at face value that your compensation is decreasing when you RVU's are increasing. It unfortunately is not that simple of a calculation.

Please let me know if you have any additional questions. I will be happy to assist and work through this with you!

Thanks,
Makenzie

Makenzie Mulbry, MBA
Business Manager
Department of Otolaryngology
Medical University of South Carolina
135 Rutledge Ave | MSC 550 |
Charleston, SC 29425
843-876-3094
MUSChealth.org/ent

-----Original Message-----
From: Mulbry, Makenzie
Sent: Tuesday, May 11, 2021 8:22 AM
To: Day, Terry <dayt@musc.edu>
Cc: Thies, Paula <thiespa@musc.edu>
Subject: RE: FY22

Dr. Day-- let me look into this and see what I can do. As soon as I have something I will get back to you.

Thanks!

Makenzie Mulbry, MBA
Business Manager
Department of Otolaryngology
Medical University of South Carolina
135 Rutledge Ave | MSC 550 |
Charleston, SC 29425
843-876-3094
MUSChealth.org/ent

-----Original Message-----
From: Day, Terry
Sent: Tuesday, May 11, 2021 7:22 AM
To: Mulbry, Makenzie <braism@musc.edu>
Subject: FY22

Hi Makenzie

Could you pull my RVUs and salary for the past 10 Years and graph them against each other by chance?

Secondly, can you compare this against the RVUs for all HN (day/Sharma/Kaczmar/Lentsch/skoner/hornig/Graboyes) and ask the hospital for growth in HN hospital gross revenues during the same time? My vice chair and HN directorship directly impacts all HN growth and there should be some type of reward for these roles and successes.

If my RVUs keep going up and my salary is lower than prior years, this is not a viable option for me

Thanks

Terry

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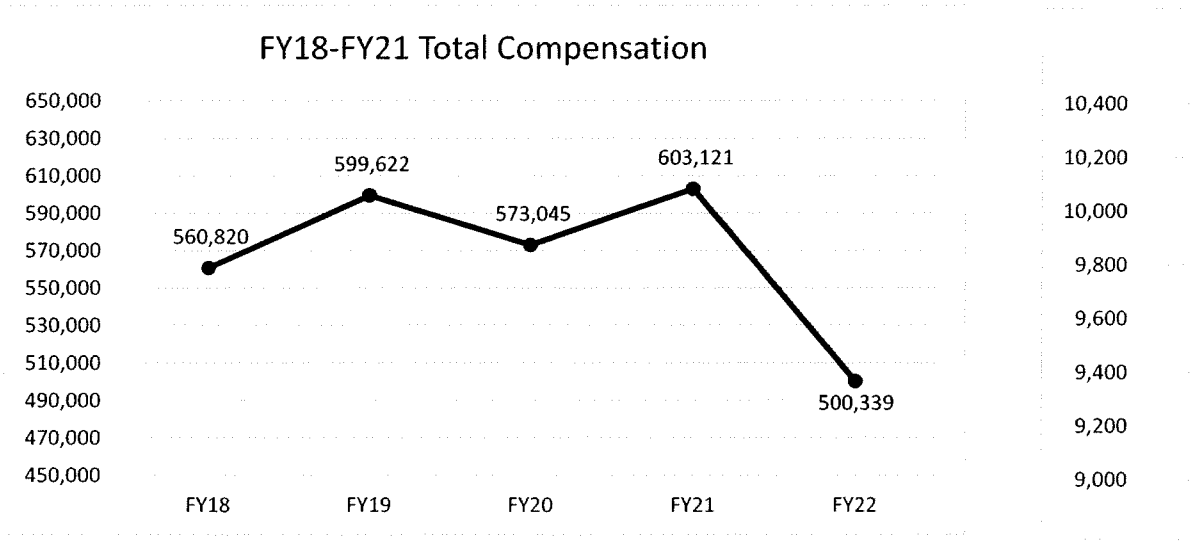
	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Day, Terry							+$100k - HCC	+$100k - HCC
MUSC	61,800	63,654	63,654	64,927	64,928	67,037	67,037	67,037
UMA	307,200	315,346	324,806	331,306	331,306	341,084	441,084	445,084
Incentive	101,600	102,885	70,712	71,048	80,172	85,893	52,699	87,501
Total:	**470,600**	**481,885**	**459,172**	**467,281**	**476,406**	**494,014**	**560,820**	**599,622**
% from prev year		2.40%	-4.71%	1.77%	1.95%	3.70%	13.52%	6.92%
# wRVU's	PRE FUNDS FLOW						10,260	9,859
% from prev year	PRE FUNDS FLOW							-3.91%

	FY18	FY19	FY20	FY21	FY22
Salary	560,820	599,622	573,045	603,121	500,339
RVUS	10,260	9,859	10,003	9,749	10,083



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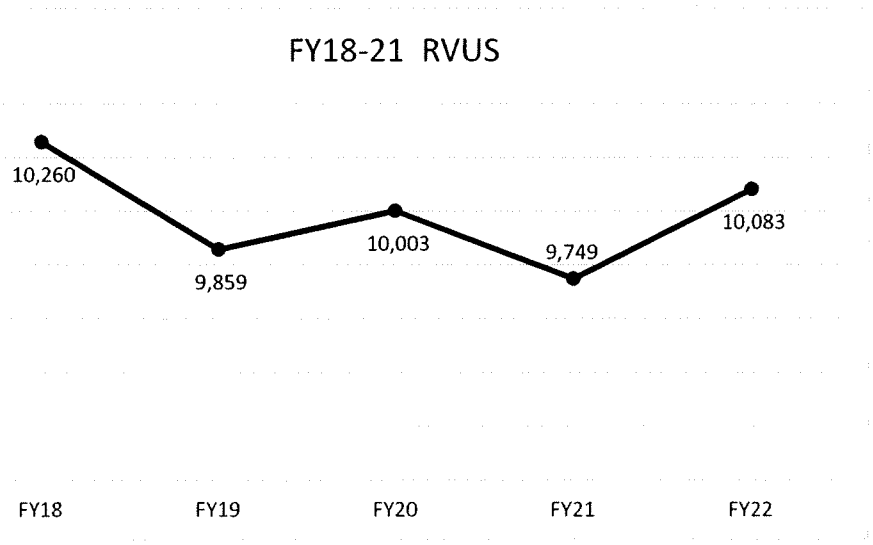
FY20	FY21	FY22
+$100k - HCC	Incentive as listed on contract . Not actual	HCC $ ends
67,037	67,037	67,037
451,084	451,084	333,234
54,924	85,000	100,068
573,045	**603,121**	**500,339**
-4.43%	5.25%	-17.04%
10,003	9,749	10,083
1.46%	-2.53%	3.42%



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Service Code	All
Patient Name	All

UHC Work RVUs	Column Labels					
Row Labels	**2018**	**2019**	**2020**	**2021**	**Grand Total**	**FY21 annualized**
DAY, TERRENCE A.						
OTOLARYNGOLOGY	10,259.73	9,858.60	10,002.73	8,937.06	39,058.12	9,750
GRABOYES, EVAN MICHAEL						
OTOLARYNGOLOGY	4,364.09	4,238.91	5,136.00	4,466.14	18,205.14	4,872
HORNIG, JOSHUA D.						
OTOLARYNGOLOGY	9,320.43	10,477.22	8,981.98	9,784.67	38,564.30	10,674
LENTSCH, ERIC J						
OTOLARYNGOLOGY	12,724.25	13,945.54	11,780.83	9,791.69	48,242.31	10,682
Grand Total	**36,668.50**	**38,520.27**	**35,901.54**	**32,979.56**	**144,069.87**	

To: Day, Terry[dayt@musc.edu]
From: Walker, Becky[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A9D307DD1DF4AE1A05F9DFE75FAB4E3-WALKERBE]
Sent: Thur 9/9/2021 8:16:34 AM (UTC-04:00)
Subject: RE: Info
Day activity DOS FY 19 through FY 21.xlsx

-----Original Message-----
From: Day, Terry <dayt@musc.edu>
Sent: Thursday, September 09, 2021 7:43 AM
To: Walker, Becky <walkerbe@musc.edu>
Subject: Info

Hi Becky

My new position is asking for my case logs

Do you have that by chance?

Thanks!

Terry

ELECTRONICALLY FILED - 2021 Nov 22 10:41 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

To: Wes Jackson[wjackson@rogerslewis.com]; Day, Terry[dayt@musc.edu]
From: David Neskey[neskeyd@gmail.com]
Sent: Thur 8/26/2021 10:26:02 AM (UTC-04:00)
Subject: Re: Fellows

CAUTION: External

Great thank you. That is how we will play it. Will forward email chain to Amy as well.

David

Get Outlook for iOS

From: Wes Jackson <wjackson@rogerslewis.com>
Sent: Thursday, August 26, 2021 10:20:22 AM
To: David Neskey <neskeyd@gmail.com>; Day, Terry <dayt@musc.edu>
Subject: RE: Fellows

David,

Amy is more up to speed on the restrictive covenants contained in your MUSC agreement, but based on my review of the agreement you previously sent, you are prohibited from soliciting any current MUSC employees during your employment and then for 18 months. Once you officially resign, there is no problem telling them where you are going. If they were to ask about leaving as well, you need to avoid anything other than telling them if they wanted to apply for a position with HCA, they would need to contact HCA directly and that you cannot be involved.

You may want to confirm that with Amy as well.

Wes

Rogers Lewis Jackson Mann & Quinn, LLC
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Phone: (803) 978-2829
Mobile: (803) 394-3336
Fax: (803) 252-3653
Email: wjackson@rogerslewis.com
Website: www.rogerslewis.com

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From: David Neskey <neskeyd@gmail.com>
Sent: Thursday, August 26, 2021 9:36 AM
To: Wes Jackson <wjackson@rogerslewis.com>; Day, Terry <dayt@musc.edu>

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Subject: Fellows

[This email originated outside the organization. Do not click any links or attachments unless you know the sender]
Hi Wes,

Couple of quick questions. One is regarding the fellows. We are planning on having them transition with us want to make sure there is a minimal gap in the training. Similar to us they will need credentialling but are already licensed in SC. Once we put in our letter of resignation, are we still at risk of solicitation if we talk to the fellows? Regardless when do you think it will be the best time to tell them and start that process legally.

Second which is similar. Can I be guilty of solicitation after I put in my letter of resignation but am still working in the 90 day period before departure? Thanks

David

To: rodrigo-bayon@uiowa.edu[rodrigo-bayon@uiowa.edu]; trinitia.cannon@duke.edu[trinitia.cannon@duke.edu]; Kevin_Emerick@meei.harvard.edu[Kevin_Emerick@meei.harvard.edu]; tghanem1@hfhs.org[tghanem1@hfhs.org]; hartig@surgery.wisc.edu[hartig@surgery.wisc.edu]; ahessel@mdanderson.org[ahessel@mdanderson.org]; derrick_lin@meei.harvard.edu[derrick_lin@meei.harvard.edu]; Neskey, David[neskey@musc.edu]; lorloff@stanford.edu[lorloff@stanford.edu]; william.ryan@ucsf.edu[william.ryan@ucsf.edu]; shindom@ohsu.edu[shindom@ohsu.edu]; yshnayder@kumc.edu[yshnayder@kumc.edu]; gthomas@med.miami.edu[gthomas@med.miami.edu]; rsweber@mdanderson.org[rsweber@mdanderson.org]; dweed@med.miami.edu[dweed@med.miami.edu]; chad.zender@uhhospitals.org[chad.zender@uhhospitals.org]
From: JJ Jackman[jj@ahns.info]
Sent: Mon 9/13/2021 7:57:39 PM (UTC-04:00)
Subject: Fwd: MUSC Fellowship
ATC meeting 09_13_21.2.docx

CAUTION: External

Hello all,

for our ATC call tonight...

jj

-------- Forwarded Message --------
Subject: Re: MUSC Fellowship
Date: Sun, 12 Sep 2021 22:20:28 +0000
From: Neskey, David <neskey@musc.edu>
To: Weed, Donald Topping <DWeed@med.miami.edu>
CC: Amy Hessel <ahessel@mdanderson.org>, JJ Jackman <jj@ahns.info>

Attached are my the responses to your questions. Please let me know of any questions. As this ATC meeting directly relates to me should I be prepared to present something or will the two of you present? Should I plan on attending the meeting? Thanks for your guidance.

David

From: Weed, Donald Topping <DWeed@med.miami.edu>
Date: Saturday, September 4, 2021 at 11:37 AM
To: Neskey, David <neskey@musc.edu>
Cc: Amy Hessel <ahessel@mdanderson.org>, JJ Jackman <jj@ahns.info>
Subject: MUSC Fellowship

CAUTION: External

David:

I appreciate your notifying Amy and me about the planned major changes to the Head and Neck Division at MUSC and the potential impacts of these changes on the fellowship. Given the significance of these changes the ATC will need to determine whether or not the MUSC AHNS HN Fellowship will have sufficient educational resources to maintain its certification. Chief among our concerns in the short term will be the impact of these changes on your current fellows, and the fellows that have matched for the fellowship to begin July 2022. On behalf of the ATC I request that you provide a written summary of the anticipated changes. Specifically please provide the following information:

1) Specify which faculty members will be leaving MUSC.
2) Specify which key faculty members currently participating in the training of the HN fellow will remain at MUSC.
3) Provide the anticipated date of departure of the head and neck surgeons specified above.
4) If there are plans to continue the fellowship at MUSC provide the name of the proposed fellowship director.
5) If there is not a plan to continue the fellowship at MUSC please provide your proposed plan for completion of the fellowship

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training of your current fellows.

The ATC will be meeting to review your responses to these queries, and I anticipate we will have more questions for you, for your fellows, and for key faculty members at MUSC as we finalize our decisions moving forward. Email is sufficient for these communications.

Best regards,
Don

Donald T. Weed, MD, FACS
W. Jarrard Goodwin Professor and Vice Chairman for Academic Affairs
Department of Otolaryngology
Co-leader Head and Neck Site Disease Group
Sylvester Comprehensive Cancer Center
University of Miami Miller School of Medicine

Sent from my iPad

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1) Specify which faculty members will be leaving MUSC.
Head and Neck Oncologic and Reconstructive Surgery
Terry Day, MD
Eric Lentsch, MD
David Neskey, MD
Joshua Hornig, MD

Head and Neck Radiation Oncology
Anand Sharma

Dental Oncology and Maxillofacial Prosthodontics
Besty Davis, DMD

Oral and Maxillofacial Surgery
Kinon Lechelop, DMD

Head and Neck Oncology Research
Chrystal Paolos, PhD
Jessica Thaxton, PhD
Alan Diehl, PhD

2) Specify which key faculty members currently participating in the training of the HN fellow will remain at MUSC.
Unknown but currently, appears that Evan Graboyes (Reconstructive Surgeon) Judith Skoner (Facial Plastic and Reconstructive Surgery) are planning to remain at MUSC

3) Provide the anticipated date of departure of the head and neck surgeons specified above.
December 1, 2021

4) If there are plans to continue the fellowship at MUSC provide the name of the proposed fellowship director.

This would be at the discretion of current MUSC faculty and new recruits as required by AHNS and ATC but considerations should be give to:

Judith Skoner, MD would be a top candidate as Program Director
Evan Graboyes, MD would be a top candidate as Associate Program Director since he is in his 4th year of practice

5) If there is not a plan to continue the fellowship at MUSC please provide your proposed plan for completion of the fellowship training of your current fellows.

To: Weed, Donald Topping[DWeed@med.miami.edu]
Cc: Amy Hessel[ahessel@mdanderson.org]; JJ Jackman[jj@ahns.info]
From: Neskey, David[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=756153ba86b748c1b7fbe2681e6a6599-dmn201]
Sent: Mon 9/13/2021 8:51:35 AM (UTC-04:00)
Subject: Re: [EXTERNAL] Re: MUSC Fellowship

Ok thank you.

Get Outlook for iOS

From: Weed, Donald Topping <DWeed@med.miami.edu>
Sent: Monday, September 13, 2021 7:59:44 AM
To: Neskey, David <neskey@musc.edu>
Cc: Amy Hessel <ahessel@mdanderson.org>; JJ Jackman <jj@ahns.info>
Subject: Re: [EXTERNAL] Re: MUSC Fellowship

CAUTION: External

Yes this will need to go through exec. I think the fellows will hear something within the next two weeks but likely won't be definitive yet.

Sent from my iPhone

> On Sep 13, 2021, at 7:19 AM, Neskey, David <neskey@musc.edu> wrote:
>
> Correct MUSC has not offered any academic affiliations.
>
> Evan completed his fellowship in 2017. So he would complete his 5th not 4th year as faculty at the end of 2022. i.e he is in his 5th year of practice.
>
> The fellow (s) will be based out of Charleston. The support of HCA/Sara Cannon will be in the form of regional tumor boards as you suggest along with clinical trials, outcomes and translational research opportunities.
>
> I will be available for any additional questions or discussions. Following ATCs decision, will this topic have to be discussed through executive council? If so do you have an idea as to when a ruling for the current fellows will be made? Just want to keep them as up to date as possible. Thanks
>
> David

From: Weed, Donald Topping <DWeed@med.miami.edu>
Date: Sunday, September 12, 2021 at 8:34 PM
To: Neskey, David <neskey@musc.edu>
Cc: Amy Hessel <ahessel@mdanderson.org>, JJ Jackman <jj@ahns.info>
Subject: Re: [EXTERNAL] Re: MUSC Fellowship

CAUTION: External

David:

To clarify, in the attached document there is a statement with two negatives that I have interpreted as MUSC has not

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offered the departing group any opportunity for academic affiliation with MUSC, correct? Also, can you confirm that Evan Graboyes will complete his fourth year of practice summer of 2022? Finally can you clarify for me how the national network of HCA healthcare and the national Sarah Cannon Cancer Network would contribute to the fellowship beyond regional tumor boards, if that is an example, etc? There would not be a plan for the faculty or fellow to care for patients at non-Charleston based institutions, correct, or are you suggesting that is an option? Or is the importance of the national network primarily related to educational infrastructure and virtual discussions of multidisciplinary care, etc. I understand this is not yet established but just would like to have a better understanding of what you are proposing in this next to last paragraph for our discussion tomorrow.

JJ please provide this document to the committee tomorrow

Thanks,
Don

Sent from my iPad

On Sep 12, 2021, at 6:20 PM, Neskey, David <neskey@musc.edu> wrote:

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Attached are my the responses to your questions. Please let me know of any questions. As this ATC meeting directly relates to me should I be prepared to present something or will the two of you present? Should I plan on attending the meeting? Thanks for your guidance.

David

From: Weed, Donald Topping <DWeed@med.miami.edu>
Date: Saturday, September 4, 2021 at 11:37 AM
To: Neskey, David <neskey@musc.edu>
Cc: Amy Hessel <ahessel@mdanderson.org>, JJ Jackman <jj@ahns.info>
Subject: MUSC Fellowship

CAUTION: External

David:

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3) Provide the anticipated date of departure of the head and neck surgeons specified above.
4) If there are plans to continue the fellowship at MUSC provide the name of the proposed fellowship director.
5) If there is not a plan to continue the fellowship at MUSC please provide your proposed plan for completion of the fellowship training of your current fellows.

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The ATC will be meeting to review your responses to these queries, and I anticipate we will have more questions for you, for your fellows, and for key faculty members at MUSC as we finalize our decisions moving forward. Email is sufficient for these communications.

Best regards,
Don

Donald T. Weed, MD, FACS
W. Jarrard Goodwin Professor and Vice Chairman for Academic Affairs
Department of Otolaryngology
Co-leader Head and Neck Site Disease Group
Sylvester Comprehensive Cancer Center
University of Miami Miller School of Medicine

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