

RECEIVED

Apr 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-000352

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

RECORD ON APPEAL – VOLUME III

James K. Gilliam, Esquire
Burr & Forman LLP
104 South Main Street, Suite 700
Greenville, SC 29601
(864) 271-4940

Robert L. Widener, Esquire
Celeste Tiller Jones, Esquire
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800

Counsel for the Appellants

James Lynn Werner, Esquire
David B. Summer, Esquire
Katon E. Dawson, Jr., Esquire
Ashley W. Johnson, Esquire
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite #1100
Columbia, South Carolina 29201
(803) 255-8000

Counsel for the Defendants/Respondents

TABLE OF CONTENTS

Volume I

Orders

Form 4 Order Denying Motion for Temporary Injunction (December 15, 2021)1

Form 4 Order Denying Motion to Alter or Amend the Order Denying Plaintiffs’ Motion for Temporary Injunction (February 18, 2022)4

Order for Case Assignment to the Business Court (February 24, 2022)7

Pleadings

Summons.....9

Complaint.....17

Transcripts

Transcript from Hearing on Motion for Temporary Injunction (December 9, 2021).....47

Transcript from Hearing on Motion to Supersede Prior Orders Denying Plaintiffs Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal (May 13, 2022).....103

Exhibits

Notice of Filing Plaintiffs’ Master Exhibits (November 22, 2021)
Plaintiffs’ Master Exhibits136

Volume II

(*continued*) Notice of Filing Plaintiffs’ Master Exhibits (November 22, 2021)
Plaintiffs’ Master Exhibits479

Other Materials or Documents

MUSC/UMA’s Motion for Temporary Injunction (November 22, 2021).....519

Affidavit of Patrick J. Cawley527

Affidavit of Raymond N. DuBois543

Affidavit of David S. Levitt557

Affidavit of Timothy Brendle562

HCA Healthcare, Inc.’s Motion to Dismiss (December 7, 2021).....566

Affidavit of Michael Bray.....570

HCA Healthcare, Inc.’s Memorandum of Law in Support of the Motion to Dismiss (December 7, 2021)	574
Notice of Filing Affidavits in Opposition to Plaintiffs’ Motion for Temporary Injunction (December 7, 2021)	584
Affidavit of Dr. Peter Horwich	586
Affidavit of Elaine Meuli.....	590
Affidavit of Andy Miller.....	593
Plaintiffs’ Memorandum of Law in Support of Motion for Temporary Injunction (December 8, 2021)	595
Trident Medical Center, LLC’s Memorandum of Law in Opposition to the Motion for Temporary Injunction (December 9, 2021)	629
Plaintiff’s Reply Memorandum of Law (regards to their Motion for Temporary Injunction) (December 14, 2021)	648
Plaintiffs’ Memorandum in Opposition to Defendant HCA Healthcare, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction (December 14, 2021)	653
Plaintiffs’ Motion to Alter or Amend the Order Denying Plaintiffs’ Motion for Temporary Injunction (December 28, 2021).....	673
Defendants’ Memorandum in Opposition to Plaintiffs’ Motion to Alter or Amend the Order Denying Plaintiffs’ Motion for Temporary Injunction (January 10, 2022).....	764

Volume III

Notice of Dismissal of Individual Defendants (with prejudice) (January 14, 2022)	776
Plaintiffs’ Motion to Supersede Prior Orders Denying Plaintiffs Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal (March 25, 2022).....	778

Certificate of Counsel

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,)

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

**NOTICE OF DISMISSAL
OF INDIVIDUAL DEFENDANTS
(with prejudice)**

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.)
_____)

Pursuant to Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure, Plaintiffs hereby give notice of dismissal, *with prejudice*, of the claims in Plaintiffs' Complaint against the Individual Defendants, Terry A. Day, Betsy Kay Davis, Joshua D. Hornig, Eric J. Lentsch, David M. Neskey and Anand K. Sharma. The remaining claims in Plaintiffs' Complaint, against HCA Healthcare, Inc. and Trident Medical Center, LLC, are not dismissed.

[signature page follows]

Respectfully submitted,

BURR & FORMAN LLP

s/ Celeste T. Jones

Celeste T. Jones, SC Bar # 3173
Jane W. Trinkley, SC Bar # 5633
Robert L. Widener, SC Bar # 6089
P.O. Box 11390
Columbia, SC 29211
(803) 799-9800 (Telephone)
(803) 753-3278 (Fax)
ctjones@burr.com
jtrinkley@burr.com
rwidener@burr.com

William Y. Klett, III, SC Bar # 64822
100 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 723-7831
wklett@burr.com

James K. Gilliam, SC Bar #76695
104 South Main Street, Suite 700
Greenville, SC 29601
(864) 271-4940
jgilliam@burr.com

Columbia, South Carolina
January 14, 2022

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,

Case No. 2021-CP-10-05289

Plaintiffs,

**PLAINTIFFS' MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
A TEMPORARY INJUNCTION DURING
PENDENCY OF APPEAL**

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.

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

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,

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

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'

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.

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), SCRCF, "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), SCRCF, an application for such relief should be made first to the trial court, if practicable. In addition to seeking relief under Rule 62, SCRCF, 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), SCRCF, 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.

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).

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'

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

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

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

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).

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

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.

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,

BURR & FORMAN, LLP

s/James K. Gilliam

James K. Gilliam, Esq. SC Bar #76695
BURR & FORMAN, LLP
104 South Main Street, Suite 700
Greenville, South Carolina 29601
Telephone: 864-271-4940
jgilliam@burr.com

Celeste T. Jones, Esq., SC Bar 3173
Robert L. Widener
BURR & FORMAN LLP
Post Office Box 11390
Columbia, South Carolina 29211
Telephone: 803.799.9800
Facsimile: 803.753.3278
ctjones@burr.com

*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

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. 2021-CP100-5289

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.)

ATTACHMENT 1 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

DECEMBER 9, 2021 HEARING TRANSCRIPT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
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

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

Celeste Tiller Jones, Esquire
McNair Law Firm
12211 Main Street
Columbia, South Carolina 29201
803-799-9800

James Lynn Werner, Esquire
Parker Poe Adams & Bernstein
1221 Main Street #1100
Columbia, South Carolina 29201
803-255-8000
sherrieellison@parkerpoe.com

Cathy L. Young, CVR-M
Official Circuit Court Reporter
P.O. Box 4604
Beaufort, SC 29903

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

* * * * *

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.

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

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

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

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

1 documents, and today is governed under Section 59-
2 123-10 under Title 59 in the Education Act. It is
3 the -- and that's when it was -- the name was
4 changed to the Medical University of South Carolina.
5 Chapter 123 of Title 59 contains all of the
6 information related to the makeup of MUSC, the
7 appointment of its Board of Trustees, and its
8 operations by the General Assembly and the Governor,
9 and it sets forth the powers and the
10 responsibilities. One of those responsibilities
11 under Title 59 of the Education Act is that we are
12 -- we are regulated by the Commission on Higher
13 Education in South Carolina. And to that end, have
14 established and adopted our mission statement. And
15 the mission statement for the Medical University of
16 South Carolina as approved by the Trustees is that
17 the Medical University of South Carolina is South
18 Carolina's only comprehensive academic health
19 sciences system. Our purpose is to preserve and
20 optimize human life in South Carolina and beyond.
21 MUSC provides an inter-professional environment for
22 learning, discovery, and healing through education,
23 research, and a provision of comprehensive
24 healthcare.

25 The University Medical Associates is a not-for-

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

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

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

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

5 The other provision in this handbook that I
6 think is important for the Court to take note of
7 during this hearing is at page 80. It's section 1.
8 -- 7.12 and 4.1. It is the definition of
9 intellectual property, and in the handbook, it
10 specifically provides that the intellectual property
11 of MUSC and UMA is know-how/show-how unique
12 materials and tangible results of a research. It
13 includes all of those things that are highlighted in
14 the PowerPoint there for the Court. The motion that
15 is to be decided today by the Court is the Medical
16 University and UMA's motion for temporary
17 injunction. We speak in this -- in our motion, if
18 you would put the motion page up, this is the
19 excerpt from the motion. (Do you see it? Thank
20 you.) Six different aspects of this motion. The
21 first three is to prohibit the hospital defendants
22 -- the first one is to prohibit the hospital
23 defendants from further utilizing the plaintiffs'
24 confidential and proprietary information, including
25 the instrument list, the patient list, the physician

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

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

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

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

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

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

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

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

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

25 The next exhibit is Exhibit 6. Exhibit 6, Your

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

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

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

1 in-camera is Exhibit 6 and 7.

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

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

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

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

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

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

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

22 MR. WERNER: No.

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

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

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

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

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

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

11 THE COURT: Sure.

12 MS. JONES: Okay. Thank you.

13 So those are the preference cards. That relates
14 to the property that we are currently aware of. The
15 next group of exhibits relates to the interference
16 with the fellowship -- Head and Neck Oncology
17 Fellowship training program. And it really begins
18 with Exhibit 11. August 26th, 2021, is the date of
19 this exhibit. And in Exhibit 11, it is set forth a
20 couple of questions, one regarding the fellows, "We
21 are planning on having them transition with us." In
22 their words, not mine, they're planning on having
23 the fellows transition with them to HCA. Exhibit
24 12, the next exhibit -- I'm sorry, Exhibit 15.
25 Exhibit 15, Your Honor, is the request on June the

1 3rd to get copies of the actual signed contracts and
2 agreement that MUSC has with the fellows, and this
3 was the physician who was the -- who was the chair
4 of the Head and Neck -- of the Fellowship Program.
5 I want to be sure I've got his title right. He was
6 the Fellowship Program Director. And when this was
7 going on, MUSC and the UMA think these people are
8 working for them and the Fellowship Program
9 Director. He gets copies of the actual agreements
10 on June the 3rd, and then on August the 26th, master
11 Exhibit 11, well, that's the one we just went
12 through where they say the plaintiff had taken with
13 them, then master Exhibit 12 is correspondence that
14 came and we located, not at the time, it was not
15 turned over to other officials at MUSC at the time,
16 but it did reach us eventually because we went back
17 into their emails and found all of this, and prior
18 to September the 4th, there was communication to Dr.
19 Donald Weed. Dr. Weed is the head of the
20 accreditation group that accredits the Head and Neck
21 Oncology training programs in the United States.
22 And Dr. Weed is writing and says, "I appreciate your
23 notifying Amy, and he's referring to Amy Hessel
24 (phonetic) there who's also one of the members of
25 the accrediting society, about the potential major

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 productive. I want to invite you to join us in
 2 Nashville for introduction to key Sarah Cannon/HCA
 3 leaders. So HCA, its South Atlantic team, Sarah
 4 Cannon, and Trident, were all working on this
 5 knowingly. If you look at Exhibit 18, by June the
 6 2nd, this is a communication in which the physicians
 7 are discussing that HCA has confirmed the meeting in
 8 their South Atlantic Division Headquarters. That
 9 office, Your Honor, sits on Daniel Island in the
 10 City of Charleston. The meeting, the first half
 11 will be finalizing contracts, and the second will be
 12 -- and I think this is important, departure from the
 13 current employer and the timeline. Their words, not
 14 mine. Exhibit 20, this is an email sending the then
 15 negotiated and finalized contract, and it says,
 16 "Here's the contract." This is a complex extraction
 17 from our current employer. It's an extraction. A
 18 group of us is leaving. We will not sign these
 19 contracts. This is in July. Even though they're
 20 finished, for anywhere from four to fourteen days
 21 based on how the extraction process goes. They
 22 couldn't be clearer in what their intentions were,
 23 and what they're agreement and plotted path is with
 24 the Hospital defendants. The resignations that they
 25 submitted were in late August -- were in August --

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

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

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

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

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

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

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

12 THE COURT: Okay.

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

25 Thank you, Your Honor.

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

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

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

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

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

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

17 THE COURT: Okay. Then go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: All right.

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

12 THE COURT: Yeah, Obviously --

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

16 THE COURT: No, that's --

17 MR. WERNER: We put it in a brief.

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

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

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

7 THE COURT: I will.

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

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

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

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

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

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

25 MS. JONES: I have them all.

1 MR. WERNER: Excuse me?

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

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

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

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

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

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

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

16 MR. WERNER: Yeah, have you got one?

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

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

21 MS. JONES: And it's not --

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

24 THE COURT: Mark it Exhibit 1.

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

1 reporter.

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

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

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

9 THE COURT: All right.

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

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

18 THE COURT: Sure.

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

21 THE COURT: Understood.

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

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

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

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

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

12 THE COURT: Uh-huh.

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

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

19 MR. WERNER: Okay.

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

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

1 MS. JONES: I will do it.

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

4 MS. JONES: Absolutely. Absolutely.

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

1 they're not confidential and protected information.
2 THE COURT: Okay. Thank you. All right. We're
3 at ease.
4 MS. JONES: Thank you, Your Honor.
5 Whereupon, the hearing was concluded at 2:54 p.m.)
6 - - -END OF TRANSCRIPT- - -
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

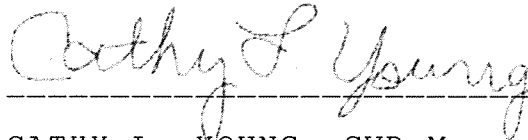
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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, CVR-M

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. 2021-CP100-5289

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.)
_____)

**ATTACHMENT 2 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL**

AFFIDAVIT OF PATRICK CAWLEY

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,)

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

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.

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.

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

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

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 #6².

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.

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.

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."

- 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.**

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

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.

- 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.**

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.

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 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.

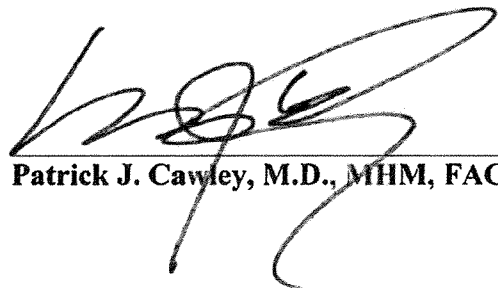
55. MUSC is concerned for patients suffering from head and neck cancers. It is concerned that another healthcare facility (and former MUSC employees) may seek to use MUSC’s confidential and proprietary information to try to emulate those complex procedures that have been historically performed by and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

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

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. 2021-CP100-5289

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.)

ATTACHMENT 3 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

AFFIDAVIT OF RAYMOND N. DUBOIS

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,)

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

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

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

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.

#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.

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 #6².

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.

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.

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.

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

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.

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

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.

(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**.

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.

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.

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

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

ATTACHMENT 4-

**TO PLAINTIFFS' MOTION TO
SUPERSEDE PRIOR ORDERS DENYING
PLAINTIFFS INJUNCTIVE RELIEF AND
TO GRANT A TEMPORARY INJUNCTION
DURING PENDENCY OF APPEAL**

SETTLEMENT AGREEMENT

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 been 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:

Witness to Signature by Physician:



David M. Neskey, M.D.



Printed Name: Dr. David M. Neskey, M.D.

Dated: December 8, 2021

[MUSC and UMA Signatures on Following Page]


Medical University of South Carolina


Signature

By: PATRICK T. CAWLEY, MD

Its: VP OF HEALTH AFFAIRS

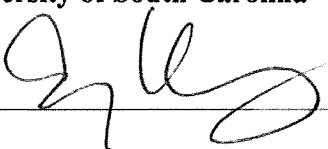
Witness to Signature by MUSC


Signature

Printed Name: ANDREA H. BRISBIN

Dated: December 8, 2021


University Medical Associates of the
Medical University of South Carolina


Signature

By: EUGENE WONG, MD

Its: CHIEF PHYSICIAN EXECUTIVE

Witness to Signature by UMA


Signature

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 12/15/21

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 5 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 5

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,)

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. _____

EXHIBIT 5
TO MASTER EXHIBITS

MUSC FACULTY HANDBOOK

Section	Section Title	Page
1.	PREFACE	1
2.	INTRODUCTION	2
2.01	Revision Process	2
2.02	Abbreviations	2
3.	FACULTY ORGANIZATION AND GOVERNANCE	4
3.01	The Faculty Body	4
3.02	The Faculty Senate	4
3.02.01	Faculty Senate Constitution	4
3.02.02	Faculty Senate By-Laws	12
3.03	University-Wide Committees	16
4.	FACULTY RANKS AND STATUS	17
4.01	Regular Faculty Ranks	17
4.01.01	Instructor	17
4.01.02	Assistant Professor	17
4.01.03	Associate Professor	17
4.01.04	Professor	17
4.02	Special Faculty Ranks	18
4.02.01	Assistant	18
4.02.02	Associate	18
4.03	Modifiers to Faculty Ranks	18
4.03.01	Visiting	18
4.03.02	Adjunct	18
4.03.03	Affiliate	18
4.03.04	Clinical	19
4.03.05	Research	19
4.04	Medical University Hospital Authority (MUHA)	19
4.05	South Carolina Area Health Education Consortium (SC AHEC)	20
4.06	Honorary University Status	20

4.06.01	Emeritus	20
4.06.02	Distinguished University Professor	21
4.07	Faculty Appointment to More Than One Unit	22
4.07.01	Joint	22
4.07.02	Dual	22
5.	FACULTY APPOINTMENT, PROMOTION, TENURE AND EVALUATION	23
5.01	College/Department Faculty Appointment, Promotion and Tenure Committee	24
5.02	Faculty Appointment	25
5.02.01	Criteria for Appointment	25
5.02.02	Procedures for Appointment	25
5.02.03	Term of Appointment	26
5.03	Faculty Promotion	27
5.03.01	Criteria for Promotion	27
5.03.02	Procedures for Promotion	27
5.04	Faculty Tenure	28
5.04.01	Criteria for Tenure	28
5.04.02	Procedures for Granting Tenure	29
5.05	Post Tenure Review	29
5.06	Faculty Evaluation	34
5.07	Faculty Salary Increases	35
5.08	Distribution of Faculty Activity	36
5.09	Faculty Record Review	36
5.10	Universal Faculty Contract	37
6.	FACULTY DEVELOPMENT	38
6.01	Sabbatical Leave	38
6.02	Upward Faculty Mobility Toward Advanced Degrees	39
6.02.01	Academic Requirements	39
6.02.02	Financial considerations and Requirements as a Faculty Member	39
6.02.03	Financial requirements as a Student	40

6.02.04	Procedure for Faculty Member	40
6.02.05	Administrative Procedure	41
6.03	Faculty Desiring to Obtain a Degree in Addition to Terminal Degree Already Held	42
6.04	Tuition Assistance	42
6.05	Travel	43
6.06	MUSC International Travel Policy	43
7.	FACULTY DUTIES AND RESPONSIBILITIES	44
7.01	MUSC Code of Conduct	44
7.02	Academic Freedom	45
7.03	Outside Activities	45
7.04	Political Activities	46
7.05	Conflict of Interest	46
7.05.01	MUSC and MUHA Conflict of Interest Policy	47
7.05.02	Research Conflict of Interest Definitions and Guidelines	54
7.06	University Compliance Plan	54
7.07	Industry Relations Policy	55
7.08	Faculty Start-Up Ventures Policy	68
7.09	Expert Testimony	68
7.10	Evaluation of Department Chairs, Deans, and/or Unit Directors	69
7.11	Copyright Protections	69
7.12	Faculty Research Activities	70
7.12.01	Research and Sponsored Programs	70
7.12.02	Responsible Conduct of Research	71
7.12.03	Misconduct in Scientific Research	73
7.12.04	Intellectual Property: Policies and Procedures	74
8.	CONTRACT DISPUTE RESOLUTION and FACULTY GRIEVANCE AND APPEAL	83
8.01	Faculty Appointment Contract Dispute Resolution	83
8.02	Faculty Grievance and Appeal Procedure	86
8.02.01	Initial Stage and Grievance Procedure	86
8.02.02	Grievance Procedures	87

8.02.03	Action by the Hearing Committee	88
8.02.04	Action by the Administration of the University	88
8.02.05	Action by the Board	89
8.02.06	Definition of Rights and Challenges in a Grievance Procedure	89
8.02.07	Access to Records of Hearings	90
8.02.08	To Receive Expeditious Consideration	90
8.02.09	Annual Report of the Chair of the Hearing Committee	90
9.	FACULTY SEPARATION	91
9.01	Criteria for Termination of Tenured Faculty	91
9.02	Procedures for Termination of Tenured Faculty	91
9.03	Non-Reappointment and Termination of Non-Tenured Faculty	93
9.04	Dismissal for Cause Before the End of a Specific Contract Period for Non-Tenured Faculty	94
9.05	Resignation	94
9.06	Retirement	94
10.	UNIVERSITY PERSONNEL POLICIES	96
10.01	Faculty Leave and Authorized Absences	96
10.01.01	Leave with Pay	96
10.01.02	Extended Leave without Pay	97
10.01.03	Family and Medical Leave Act	98
10.01.04	Authorized Absences	98
10.01.05	Academic Time	100
10.02	Faculty Benefits	101
10.02.01	General Employment Benefits	101
10.02.02	Liability Insurance	102
11.	GENERAL HUMAN RESOURCE POLICIES	103
11.01	Affirmative Action	103
11.02	Nepotism	103
11.03	Employee Health Screening Policy	103
11.04	MUSC Employee Health Services Screening Criteria	103
11.05	Criminal Record Searches	103

11.06	Drug Free Workplace	103
11.07	Infectious Diseases	103
11.08	Sexual Harassment Policies	104
11.09	Use of the University Name, Seal, or Logos	104
11.10	Computer Use Policy	104
11.11	Sequestration of Documents/Records for Audits/Investigations Carried Out by MUSC	104
11.12	Disaster Preparedness	104
11.13	MUSC Honor Code	104

1 **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	

2 The Board of Trustees of the Medical University of South Carolina (hereafter referred to as
 3 the "Board" and "MUSC" respectively) is the governing board of the university; however,
 4 the university administrators and the members of the faculty of the university share
 5 responsibility for planning and implementing cooperative and constructive actions within
 6 the institutional structure under the guidance of the Board (Current administrative structures
 7 are depicted at the following webpages:

- 8 <https://web.musc.edu/about/leadership>
<https://education.musc.edu/leadership/provost>

9 The policies and respective rules governing the Board, the administration, and the faculty, as
 10 set forth in the *Faculty Handbook*, should convey the mutual trust and agreement inherent in
 11 all explicit and implied contractual agreements between these respective bodies.

12 The *Faculty Handbook* (hereafter referred to as "the Handbook") contains the rules and
 13 regulations that govern faculty affairs and functions as part of the University Faculty
 14 Appointment Contract between each faculty member and the university. Faculty members
 15 should be knowledgeable about the areas covered in the Handbook. The signing of annual
 16 contracts that specify an individual faculty member's compensation and distribution of
 17 activity, does not negate the Handbook's status as a partial contract of employment. For
 18 more information on Faculty Appointment, Promotion, Evaluaiton, and Tenure Policies, see
 19 section 5 of the Handbook.

20 As representative body of the faculty, the Faculty Senate is expected to offer interpretation
 21 of the Handbook to the Office of the Executive Vice President for Academic Affairs and
 22 Provost.

23

24 **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	

25

26 The MUSC *Faculty Handbook* contains university policies that are of major concern to the
 27 faculty, other information considered to be of special interest to the faculty, and a collection
 28 of university governing documents. The current Board-approved Handbook is accessible on
 29 the MUSC Faculty Senate Website (<https://education.musc.edu/faculty/faculty-senate>).

30 **2.01 Revision Process**

31 The charge of the Governance Committee of the Faculty Senate includes oversight and
 32 regular review of the *Faculty Handbook*.

33 Unless otherwise indicated within the policy, revisions to Sections 2-9 of the *Faculty*
 34 *Handbook* are subject to the following procedures:

- 35 • The Senate's Faculty and Institutional Relationships Committee will meet regularly
 36 to consider revisions suggested by the Governance Committee, the faculty, the
 37 Executive Vice President for Academic Affairs and Provost, or others.
- 38 • Changes recommended by the Faculty and Institutional Relationships Committee
 39 will be evaluated by the Faculty Senate and presented to the university faculty in
 40 writing and/or by e-mail prior to Faculty Senate approval.
- 41 • All proposed changes must be approved by the Faculty Senate, the Executive Vice
 42 President for Academic Affairs and Provost, the Provost's Council, the President,
 43 and the Board of Trustees.

44 Sections other than 2-9 may be revised by the Executive Vice President for Academic
 45 Affairs and Provost, the Provost's Council, and the President with the advice of the Faculty
 46 Senate and subject to Board of Trustees approval.

47 **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)

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64 **3. FACULTY ORGANIZATION AND GOVERNANCE**

65 **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	

66 The faculty of MUSC is composed of the President, the vice presidents, the deans, any
 67 officers of the university who hold academic rank, and the members of the teaching,
 68 research, service and administrative staff who hold academic rank at MUSC or its affiliated
 69 programs. With regard to university affairs, the voting faculty shall be those individuals
 70 holding a full-time primary academic appointment at MUSC with rank of Instructor and
 71 above.

72 **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	

73 The Faculty Senate acts as the sole representative body for organizing and executing that
 74 business of the faculty submitted to it by members of the faculty, the administration, or the
 75 Senate itself. The Senate also advises the administration and the faculty in matters pertaining
 76 to the faculty. The Faculty Senate is organized and governed according to the Faculty Senate
 77 Constitution and By-Laws

78 **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

79 This Constitution defines the composition of the Faculty Senate, its role in the academic
 80 affairs of the university, and the basic principles of self-governance of the faculty of the
 81 Medical University of South Carolina as authorized by the Bylaws of the Board of Trustees
 82 of the Medical University of South Carolina, Section 6, Article b, August 1976.

83 **Article I**

84 **Name**

85 The name of this representative body shall be: The Medical University of South Carolina
86 Faculty Senate, referred to in this document as Faculty Senate or as Senate.

87 **Article II**

88 **Purpose**

89 The purpose of the Faculty Senate shall be to act as the sole representative body of the
90 faculty, to receive, organize and, if deemed appropriate, execute business of the faculty that
91 is submitted to it by members of the faculty, the administration, or the Faculty Senate itself,
92 and to represent the views of the faculty to the administration. The Faculty Senate serves as
93 the voice of the faculty. In accordance with its vision and as permitted by state law, the
94 Faculty Senate serves as an advisor to the administration in ensuring the success of the
95 university's mission in teaching, research, and service.

96 **Article III**

97 **Electoral Units, Representation, Nominations, Eligibility to Vote, Elections, and Terms**
98 **of Office**

99 Membership shall be limited to qualified faculty. For the purposes of the Faculty Senate
100 membership, qualified faculty are defined as those persons holding primary academic
101 appointments of at least 50% FTE at MUSC with ranks of Instructor or above. All faculty
102 regardless of FTE shall be able to nominate for and vote in Faculty Senate elections.
103 (Paragraph amended May 2017)

104 **A. Electoral Units**

105 For the purpose of elections, the Faculty Senate shall be divided into seven Electoral Units:
106 College of Medicine Basic Sciences, College of Medicine Clinical Sciences, Dental
107 Medicine, Health Professions, Academic Affairs Faculty, Nursing, and Pharmacy. The
108 department or college of primary appointment determines Electoral Unit affiliation.

109 **B. Representation**

110 **Senators**

111 Electoral Units having 50 or fewer qualified faculty shall be represented by four Senators.
112 Electoral Units having between 51 and 100 qualified members shall be represented by six
113 Senators. Electoral Units with more than 100 qualified faculty members shall have six
114 Senators and elect one additional Senator for every 33 additional qualified faculty members
115 in excess of 100.

116 Alternate Senators

117 Each Electoral Unit shall have two Alternates. Electoral Units with more than 100 qualified
118 faculty members shall choose one additional Alternate for each 66 faculty members over
119 100.

120 **C. Nominations**

121 Candidates for membership on the Faculty Senate may be nominated by any qualified
122 faculty member of their Electoral Unit, including themselves. Qualified faculty members are
123 eligible for nomination only within the Electoral Unit with which they are affiliated.

124 **D. Eligibility to Vote**

125 All qualified faculty members are eligible to vote for Senators and Alternates. Faculty
126 members shall vote only in the primary Electoral Unit with which they are affiliated.
127 (Paragraph amended May 2017)

128 **E. Elections**

129 The Governance Committee shall establish the rules and procedures for all regular elections
130 according to sections of this Article governing Electoral Units, Representation, Nomination,
131 Eligibility to Vote and Terms of Office.

132 Regular elections to the Faculty Senate shall be conducted during the months of August and
133 September, with terms of office to begin at the Faculty Senate meeting in October.

134 Candidates receiving the greatest number of votes shall become the Senators for their
135 Electoral Unit. Candidates with the next highest numbers of votes shall become Alternate
136 Senators as determined by the formula in Article III.B. The Governance Committee shall
137 retain the results of the election so that Alternate Senators with the highest numbers of votes
138 may replace resigning Senators and the slots of Alternate Senators are refilled. In the case of
139 a tie, candidates shall come to an agreement among themselves; otherwise Senators of the
140 representative Electoral Unit shall vote for one of the candidates. In the case that alternate
141 senator slots are not filled, Electoral Unit leaders may recruit faculty to serve as alternate
142 senators until the next scheduled election.

143 The Governance Committee, upon notification of the Faculty Senate of a vacancy in the
144 Faculty Senate between regular elections, shall notify the appropriate Electoral Unit
145 Committee who shall appoint a replacement to complete the unexpired term. (Paragraph
146 amended May 2017)

147 **F. Terms of Office**

148 **1. Senators**

149 Senators shall be elected to a two-year term and shall be eligible to serve a maximum of
 150 three consecutive terms. The terms of Senators from each unit shall be staggered: one-half
 151 shall be elected each year. Senators who cannot complete their terms shall submit a written
 152 resignation to the Secretary of the Faculty Senate at least one month before the date of
 153 resignation.

154 **2. Alternate Senators**

155 Alternate Senators shall be elected to a one-year term. When a Senator resigns from his or
 156 her office, the Alternate with the greatest number of votes from the prior election
 157 automatically advances to the ex-Senator’s position and completes the remainder of the ex-
 158 Senator’s term of office. After succeeding the ex-Senator and serving the remainder of that
 159 term of office, the former Alternate may stand for election and ultimately serve for a period
 160 not exceeding a total of seven consecutive years. Alternate Senators who cannot complete
 161 their term of office shall submit a letter of resignation to the Secretary of the Faculty Senate
 162 at least one month before the date of resignation.

163 **Article IV**

164 **Officers of the Faculty Senate: Election and Duties**

165 The Officers of the Faculty Senate shall be the President, Vice President, and Secretary.
 166 Officers of the Senate are considered to be at-large Senators and do not stand for re-election
 167 to the Senate from their Electoral Unit in October even if their Senate term is scheduled to
 168 expire. If an Officer-Elect’s term is not scheduled to expire when they become Officers at
 169 the October meeting, their Electoral Unit seat shall become vacant, and be filled during the
 170 regular election. (Paragraph amended May 2017)

171 **A. Election of Officers**

172 Election of Officers for the upcoming year (October – September) will be held at the July
 173 meeting. In May the Governance Committee shall call for nomination of Officers from the
 174 members of the Faculty Senate (Senators and Alternate Senators) after the election results
 175 become available. Any member of the Faculty Senate may nominate either another member
 176 of the Faculty Senate or himself or herself. All Senators are eligible to be slated regardless
 177 of time remaining on their current term unless a maximum of three terms has been reached.
 178 The Governance Committee will then draw up a slate of qualified individuals who agree to
 179 serve as President, Vice President, and Secretary. The Governance Committee shall oversee
 180 the voting process and report the results to the full Faculty Senate. (Paragraph amended May
 181 2013)

182 **B. President of the Faculty Senate**

183 The President shall preside over the Faculty Senate; represent the Faculty Senate on
 184 appropriate university Committees; convene and preside at Executive Committee meetings;
 185 coordinate review of policy affecting the faculty; conduct the business of the Faculty Senate

186 and fulfill other responsibilities incumbent on the leader of the Faculty Senate as deemed
187 appropriate. At his or her discretion, the President may delegate these responsibilities.

188 **C. Vice President of the Faculty Senate**

189 The Vice President shall assume the role of the President in the latter’s absence and perform
190 other duties as requested by the President.

191 **D. Secretary of the Faculty Senate**

192 The Secretary shall take attendance, record and publish minutes of meetings; publicize
193 scheduled meetings and agendas and items for vote; and update the Faculty Senate archives.
194 Prior to a vote by the Faculty Senate, the Secretary shall establish the existence of a quorum
195 and determine those empowered to vote. The Secretary shall discharge other duties assigned
196 by the President.

197 **Article V**

198 **Senators and Alternate Senators: Duties**

199 **A. Senators**

200 Faculty Senators shall represent the views and interests of the faculty of their respective
201 Electoral Units and the faculty-at-large. Senators shall attend at least two-thirds of monthly
202 meetings of the Faculty Senate and serve on at least one committee of the Faculty Senate. A
203 Senator who knows in advance that he/she will be unable to attend a meeting of the Faculty
204 Senate is responsible for arranging for one of the Electoral Unit’s Alternate Senators to
205 attend in his/her absence.

206 **B. Alternate Senators**

207 Alternate Senators are encouraged to attend all meetings of the Faculty Senate. Alternate
208 Senators are eligible to vote when attending in place of a Senator who is unable to attend a
209 meeting. Alternate Senators are eligible and encouraged to serve as members of Faculty
210 Senate Committees.

211 **Article VI**

212 **Removal from Faculty Senate**

213 Officers, Senators or Alternates may be removed from the Faculty Senate if they are unable
214 to fulfill their duties as stipulated in the Bylaws.

215 **Article VII**

216 **Committees**

217 Committees of the Faculty Senate have delegated authority to: consider, investigate and
218 advise on those matters directly related to the operation and purposes of the Faculty Senate;
219 and, to take action on behalf of the Faculty Senate commensurate with the committee's
220 duties, or as specially authorized by the Faculty Senate. The members of the standing
221 committees, *ad hoc* committees and subcommittees shall be members of the Faculty Senate
222 or other qualified faculty. Committees shall be chaired by Senators or Alternate Senators.

223 **A. Executive Committee**

224 The Executive Committee shall be composed of one Senator from each of the seven
225 Electoral Units, and the Officers of the Faculty Senate. The immediate Past President of the
226 Faculty Senate and the Chairs of the Senate Standing Committees shall serve as a non-
227 voting, consultative member. The Executive Committee member from the respective
228 Electoral Unit shall be selected by the Senators of that unit as stipulated in the Bylaws. The
229 Officers-Elect (President-Elect, Vice President-Elect and Secretary-Elect) of the Faculty
230 Senate shall be non-voting members of the Executive Committee from July through
231 September. The Executive Committee may go into executive session when discussing
232 sensitive issues as permitted by state law. (Paragraph amended May 2017)

233 **B. Standing Committees**

234 Standing committees of the Faculty Senate and their duties are described in the Bylaws of
235 the Faculty Senate.

236 **C. Ad hoc Committees**

237 *Ad hoc* committees of the Faculty Senate are constituted for focused tasks.

238 **Article VIII**

239 **Meetings**

240 **A. Faculty Senate**

241 Meetings shall be held monthly at a regular time and designated place. Faculty Senate
242 meetings are open to the faculty. The time and place of meetings (regular and special) shall
243 be advertised to the faculty. Members of the faculty may request to be heard at Faculty
244 Senate meetings, but have no vote or other legislative privilege. The President may call an
245 executive session that is open only to Senators and Alternate Senators

246 **B. Faculty**

247 Meetings of the faculty shall be called and presided over by the President of the Faculty
248 Senate. Notice of faculty meetings shall be given at least 30 days in advance. Meetings shall
249 be held at least once yearly. (Paragraph amended May 2017)

250 **Article IX**

251 **Bylaws**

252 Procedural guidelines governing the work of the Faculty Senate are documented in the
253 Bylaws of the Faculty Senate.

254 **Article X**

255 **Ratification of Constitution**

256 The Constitution of the Faculty Senate shall be ratified by a two-thirds vote of all Senators
257 and a two-thirds vote of all qualified faculty present at a special meeting of the faculty as
258 called by the President of the Faculty Senate or two-thirds votes of all qualified faculty
259 casting a vote in an electronically conducted vote. Upon ratification and henceforth, Articles
260 of the Constitution shall not be changed. All changes to the Constitution shall be by
261 Amendment, as described in Article XI. The Constitution shall be transmitted by the
262 President of the Faculty Senate, through the appropriate administrative channels, to the
263 Board of Trustees and shall take effect upon approval by the Board of Trustees. Prior to
264 ratification of the Constitution or any Amendment, the Governance Committee will
265 distribute pertinent documents to all qualified faculty members at least thirty days in
266 advance of a regularly scheduled faculty Meeting or electronically conducted vote (VIII.B),
267 will invite written comment, and offer an opportunity for discussion.

268 **Article XI**

269 **Amendments to the Constitution and Revisions to the Bylaws**

270 **A. Constitution**

271 This Constitution may be amended as follows:

272 A. Proposals for amendments to the Constitution may be made in writing to the President of
273 the Faculty Senate. Any qualified faculty member may propose an amendment. The
274 President of the Faculty Senate will have the item discussed at the Executive Committee. If
275 a majority of the members of the Executive Committee agree, the item will be added to the
276 agenda of the next regular meeting of the Faculty Senate.

277 B. The President shall give notice of the proposed amendments to all Senators at least thirty
278 days prior to the vote via the usual dissemination routes (e.g., email).

279 C. Faculty Senate approval of amendments will be by a vote of two-thirds of the Faculty
280 Senators.

281 D. The President shall give notice of the proposed amendment to the faculty at least thirty
282 days prior to the vote via the usual dissemination routes (e.g., email).

283 E. The proposed amendments shall be presented at a meeting of the faculty. They shall be
284 adopted by a two-thirds vote of all qualified faculty present at this meeting. Alternatively,
285 the amendment will be presented via email to the faculty, and an electronically conducted
286 vote will be taken. Two-thirds vote of all qualified faculty casting a vote is required for
287 adoption.

288 F. All amendments shall be transmitted by the President of the Faculty Senate, through the
289 appropriate administrative channels, to the Board of Trustees and shall take effect upon
290 approval by the Board of Trustees.

291 **B. Bylaws**

292 The Bylaws may be revised as follows:

293 A. Proposals for revisions to the Bylaws may be made in writing to the President of the
294 Faculty Senate. Any qualified faculty member may propose a revision. The President of the
295 Faculty Senate will have the item discussed at the Executive Committee. If a majority of the
296 members of the Executive Committee agree, the item will be added to the agenda of the next
297 regular meeting of the Faculty Senate.

298 B. The President shall give notice of the proposed revision to all Senators at least thirty days
299 prior to the vote via the usual dissemination routes (e.g., email).

300 C. Faculty Senate approval of revisions will be by a vote of two-thirds of the Faculty
301 Senators present at the meeting.

302 D. The President shall give notice of the proposed revisions to the faculty at least thirty days
303 prior to the vote via the usual dissemination routes (e.g., email).

304 E. The proposed revisions shall be presented at a regular meeting of the faculty. They shall
305 be adopted by majority vote of all qualified faculty present at this meeting. Alternatively, the
306 amendment will be presented via email to the faculty, and an electronically conducted vote
307 will be taken. Two-thirds vote of all qualified faculty casting a vote is required for adoption.

308 **Article XII**

309 **Review of the Constitution**

310 A. There shall be a mandatory review of the Constitution five years after its adoption and at
 311 least every five years thereafter to occur on the decade and years ending in '5', for example
 312 2009-2010, then 2014-2015.

313 B. This review shall be carried out by the Governance Committee at the direction of the
 314 Executive Committee. The review shall include recommendations of the Executive
 315 Committee and standing committee chairs.

316 **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	

317 **Article I. Quorum**

318 A. A quorum of the Faculty Senate necessary for the conduct of business shall be a simple
 319 majority of the voting members of the Faculty Senate except for changes to the
 320 Constitution and Bylaws as describe in Article XI of the Constitution.

321 B. A quorum of the Executive Committee necessary for the conduct of business on behalf of
 322 the Faculty Senate shall be a simple majority of the voting members of the Executive
 323 Committee.

324 C. Proxy votes shall not be allowed.

325 **Article II. Conduct of Business**

326 A. The President shall appoint a Parliamentarian. The Parliamentarian shall be a qualified
 327 faculty member but need not be a Senator. The Parliamentarian shall act as advisor to the
 328 President on matters of rules of procedure.

329 B. Business shall be conducted using the current edition of Robert's Rules of Order Newly
 330 Revised, except where otherwise specified in the Constitution and Bylaws.

331 C. Business of the Faculty Senate is normally conducted at regular meetings, special
 332 meetings, and in standing or *ad hoc* committees.

333 D. At the discretion of the President and with prior consent of the Faculty Senate, business
 334 of the Faculty Senate may also be conducted by distribution of information and ballots
 335 through mail, email or other transfer of information, provided that all other requirements
 336 of the Constitution of the Faculty Senate are met.

337 E. Action items requiring a vote by the Faculty Senate shall be distributed by the Secretary
 338 of the Faculty Senate at least 10 days before the meeting.

339 F. Action items requiring a vote by the faculty shall be distributed for comment at least 30
 340 days prior to a regularly scheduled meeting or vote.

341 **Article III. Standing Committees, *ad hoc* Committees, and Duties of Committee Members**

342 **A. Membership on Committees**

343 Most work of the Faculty Senate is conducted by standing and *ad hoc* committees.

- 344 1. Membership of the Executive Committee is by election or by virtue of office and
- 345 governed by Article VII.A. of the Constitution.
- 346 2. Each Senator shall serve on a minimum of one standing committee.
- 347 3. The Executive Committee appoints each committee chair from among Faculty
- 348 Senators or from members of the Executive Committee.
- 349 4. Senators shall serve on standing committees for one-year terms and may serve
- 350 multiple terms.
- 351 5. Members on *ad hoc* committees may serve until the assigned task is completed.

352 **B. Duties of the Committee Chair**

353 The Chair of each committee shall:

354 Apportion committee work efficiently and fairly among the committee members and, in
 355 consultation with the other committee members, decide whether the appointment of
 356 subcommittees is appropriate;

357 Seek advice from the faculty, from administrative and professional staff, and from
 358 students, if it is deemed beneficial to the committee's deliberations;

359 Keep minutes or other records of proceedings that are adequate for efficient continuation
 360 of work throughout and beyond the committee's period of service;

361 Submit an annual report to the Faculty Senate at the end of each academic year.

362 **C. Executive Committee and Standing Committees**

363 1. The Executive Committee shall:

- 364 a. Appoint Senators, Alternate Senators and qualified faculty to all committees of the
- 365 Faculty Senate, except for the Executive Committee itself;
- 366 b. Appoint each committee chair from among Faculty Senators; members of the
- 367 Executive Committee are eligible to serve as chair;
- 368 c. Ensure that committee assignments are distributed fairly among Electoral Units and
- 369 academic ranks;
- 370 d. Initiate the formation and dismissal of *ad hoc* committees, as needed;

- 371 e. Accept annual reports from each standing and *ad hoc* committee of the Faculty
- 372 Senate;
- 373 f. Submit to the faculty an annual report at the end of each academic year;
- 374 g. Appoint Senators, Alternate Senators or qualified faculty to represent the Faculty
- 375 Senate on university-wide committees;
- 376 h. Facilitate communication among the Administration of the university, the Faculty
- 377 Senate, and the faculty by meeting with the President or the President's designee and
- 378 the college Deans or their designees as necessary and by reporting to the faculty, as
- 379 deemed appropriate;
- 380 i. Act on behalf of the Faculty Senate in emergency situations. In circumstances
- 381 requiring immediate action, the committee may advise the Administration of the
- 382 university on behalf of the Faculty Senate. It shall report its recommendations to the
- 383 Faculty Senate at the next Senate meeting. (Paragraph amended May 2017)

384 2. The Governance Committee shall:

- 385 a. Govern the proceedings of the Senate;
- 386 b. Conduct Faculty Senate elections, certify eligibility of faculty for election, and
- 387 maintain appropriate records of elections [See Amendment 1 and Amendment 2];
- 388 c. Review the Faculty Senate's governing documents and recommend changes to these
- 389 documents as deemed appropriate;
- 390 d. Interpret the provisions of the Constitution and Bylaws;
- 391 e. Codify changes or amendments to the Constitution and Bylaws, as deemed necessary;
- 392 f. Call for nominations, establish slates, and conduct elections of officers of the Faculty
- 393 Senate, as described in Article IV.A.;
- 394 g. Monitor and, as necessary, manage changes to the practices and procedures of the
- 395 Faculty Senate, by revision to Bylaws as appropriate.

396 3. The Institutional Advancement Committee shall:

- 397 a. Monitor major trends in the life of the institution;
- 398 b. Track progress of action items discussed in the Senate throughout the administrative
- 399 channels of the university;
- 400 c. Participate in strategic planning for the university;
- 401 d. Report back to the Faculty Senate where deemed appropriate;
- 402 e. Request that the Faculty Senate take a position or act on issues of general interest.
- 403 Examples of actions: Collect information and report on major building activities, and
- 404 on creation, development, or discontinuation of major units or departments.

405 4. The Faculty and Institutional Relationships Committee shall:

- 406 a. Consider issues pertaining to negotiations and procedures that, in a generic sense,
- 407 apply to individual faculty. Examples of actions: Formulation of contracts,
- 408 tenure/post-tenure review, promotions and rank, equity, sabbaticals, conflicts of
- 409 interest, means of grievance.

- 410 b. Accept and evaluate requests to change the Faculty
 411 Handbook.
- 412 5. The Communication Committee shall:
- 413 a. Collaborate with other standing committees to inform faculty of issues;
 414 b. Inform the faculty about the work of the Senate through organized activities.
 415 Examples of actions: the organization of targeted workshops or retreats addressing
 416 themes such as faculty mentoring, tenure, interpretation of contracts, and sabbaticals.
 417 c. Maintain the Faculty Senate web site and ensure that Senate activities are published
 418 in university publications.
- 419 6. The Electoral Unit Committees shall:
- 420 a. Consist of all elected Senators and Alternates from the particular Electoral Unit.
 421 b. Elect one representative to serve as a member of the Executive Committee for a one-
 422 year term. This election occurs immediately after the results of the Senate election are
 423 known. This name is submitted to the Governance Committee;
 424 c. Facilitate communication among the Faculty Senate and the dean and faculty of the
 425 Electoral Unit;
 426 d. Receive requests for Senate action from faculty of their respective units and decides
 427 whether the Faculty Senate should be involved in such action. If not, the Committee
 428 directly responds to the request.
- 429 **D. *Ad hoc* Committees**
- 430 a. *Ad hoc* committees are composed of Senators, Alternates and qualified faculty for a
 431 focused task.
 432 b. Upon completion of the task, the chair presents a report to the Faculty Senate.
- 433 **Article IV. Procedure for Removal from Senate**
- 434 A. Any Officer, Senator or Alternate may resign his or her duties at any time by sending a
 435 letter to the Executive Committee; see Articles III.F.1 and III.F.2 of the Constitution.
 436 B. If the Senators of an Electoral Unit determine that one of their Senators or Alternates is
 437 ineffective, they shall contact that Senator. If no resolution is reached, the parties may
 438 take the case to the Executive Committee for deliberation and decision. These
 439 proceedings shall be confidential.
 440 C. A Senator or Alternate can be removed for cause from office by a two-thirds majority
 441 vote of the Electoral Unit Committee and the Executive Committee.
- 442 **Article VI. Revisions to Bylaws**
- 443 The Bylaws shall be reviewed at least once every two years and revisions to the Bylaws are
 444 governed by Article XI.B of the Constitution.

445 **3.03 University-Wide Committees**

446 In addition to special committees as from time to time may be appointed or elected, there
447 shall be standing chartered committees. The most current list is presented at

448 <https://web.musc.edu/about/leadership/councils>

449 All university-wide committees have faculty representation.

450

451 **4. FACULTY RANKS AND STATUS**

452 **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	

453 The following faculty ranks, as generally described below, are used throughout MUSC. Refer to
 454 individual college/department guidelines for specific criteria regarding appointment or
 455 promotion to any of these faculty ranks. With regard to University affairs, the voting faculty
 456 shall be those individuals holding an academic appointment at MUSC with regular faculty rank
 457 of Instructor and above, regardless of the percentage of FTE of the faculty appointment.
 458

459 **4.01.01 Instructor**

460 This rank usually requires training beyond the baccalaureate degree. Demonstrated technical
 461 proficiency and experience may serve in lieu of formal training. The ability to contribute to the
 462 University's teaching programs is required.
 463

464 **4.01.02 Assistant Professor**

465 This rank usually requires that a faculty member holds the appropriate terminal degree and
 466 possesses strong potential for development as a teacher, scholar, and researcher. An Assistant
 467 Professorship may be awarded in the absence of a terminal degree to individuals who have made
 468 significant teaching, research, or service contributions and who have shown evidence of
 469 academic potential.
 470

471 **4.01.03 Associate Professor**

472 This rank usually requires the appropriate terminal degree and exemplary service as an Assistant
 473 Professor for at least three (3) years at this university or equivalent service elsewhere.
 474 Individuals achieving this rank should have demonstrated teaching effectiveness, should have
 475 made significant contributions in the areas of research/scholarly activity and service, and should
 476 show promise of continued intellectual growth.
 477

478 **4.01.04 Professor**

479 This is the highest academic rank at the University and usually requires an appropriate doctoral
 480 degree. For appointment at or promotion to the rank of Professor, an individual normally will
 481 have served at the rank of Associate Professor for at least four (4) years and will have
 482 demonstrated excellence in the three areas of academic pursuit: teaching, research/scholarly
 483 activity and service. In addition, the individual should have an academic reputation extending
 484 beyond the University.

485 **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	

486 Faculty holding special appointments do not have voting privileges.

487

488 **4.02.01 Assistant**

489 This rank usually requires a bachelor's degree and the ability to participate in teaching, research,
490 and/or clinical service.

491

492 **4.02.02 Associate**

493 This rank usually requires at least a non-terminal master's degree or comparable training and
494 experience in an appropriate area.

495

496 **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		

497 The following modifiers may be made to either Regular faculty ranks (4.01) or Special faculty
498 ranks (4.02). These modifiers shall be assigned according to **5.02.02 Procedures for**
499 **Appointment.**

500

501 **4.03.01 Visiting**

502 This modified rank applies to faculty whose appointment to the faculty is for a limited time and
503 whose responsibilities are important in the regular programs of MUSC.

504

505 **4.03.02 Adjunct**

506 This modified rank applies to faculty whose responsibilities are important though not extensive
507 in the regular programs of MUSC, whose appointment is annual or continuous, and whose
508 activities do not ordinarily involve direct patient contact or teaching in clinical courses.

509

510 **4.03.03 Affiliate**

511 This modified rank applies to faculty who provide a valuable service to the MUSC mission; are
 512 appropriately qualified for the service s/he provides; qualifications and contributions are vetted
 513 by the committee that approves the college or unit’s promotion applications, then approved by
 514 the Dean and the by the Board of Trustees if the appointment is at the Associate or Professor
 515 rank; and the individual must receive no state compensation from the college or unit that issues
 516 the Affiliate faculty appointment.

517
 518 With continued and extensive service, Affiliate faculty are eligible for consideration for
 519 promotion in rank.

520
 521 **4.03.03 Clinical**

522 This modified rank applies to faculty whose responsibilities are important though usually not
 523 extensive in the regular programs of MUSC, whose appointment is annual or continuous, and
 524 whose activities ordinarily involve direct patient contact or teaching in clinical courses.

525
 526 **4.03.04 Research**

527 This modified rank applies to faculty whose responsibilities are important to the University and
 528 who has few or no job obligations other than doing research, often as a member of a research
 529 team.

530
 531 Faculty with Regular faculty ranks modified by Clinical or Research may participate in faculty
 532 governance and have full voting privileges regarding University affairs. Faculty with Regular
 533 faculty ranks modified by Visiting or Adjunct and all faculty with Special faculty rank,
 534 regardless of modifier, do not have University voting privileges. Participation in college,
 535 department, and division governance will be determined by individual colleges.

536
 537 **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	

538 ***NOTE:** For clarification of subsequent narrative, the “MUHA” is referred to when
 539 describing the legal organization and/or governance of clinical care. When describing the
 540 clinical entity itself, it will be called the “MUSC HEALTH”.

541 Individuals whose primary responsibility rests in one of the components of MUHA may
 542 hold a faculty appointment at a specified rank in a designated college, thereby recognizing
 543 participation in its educational programs.

544 **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	

545 MUSC recognizes the valuable contributions of health care professionals employed by the
 546 educational programs at AHEC-affiliated institutions and volunteer professionals not
 547 employed by AHEC-affiliated institutions. Both categories of professionals are eligible to
 548 apply for MUSC appointments. The employed AHEC professionals have "MUSC AHEC"
 549 preceding their faculty rank; volunteer professionals have "MUSC AHEC Clinical"
 550 preceding their faculty rank. All MUSC AHEC appointments are without tenure and the SC
 551 AHEC Appointments and Promotions Committee coordinates this process with the MUSC
 552 Deans' Offices.

553

554 **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	

555 The Board may appoint distinguished academicians to special university-wide rank.

556 **4.06.01 Emeritus**

557 Definition: Emeritus is an honorary title for a faculty member retiring from active university
 558 service. This rank recognizes distinguished service to the institution. It is conferred upon a
 559 faculty member when he/she retires by the Executive Vice President for Academic Affairs
 560 and Provost upon the recommendation of the department Chair and Dean of the respective
 561 college, following approval from the Board.

562 Eligibility: Emeritus status is generally reserved for regular, full-time faculty who are
 563 retiring at the rank Professor or Associate Professor and such individuals are designated as
 564 Emeritus Professor. An individual retiring at a lower rank may be granted the status of
 565 Emeritus at that rank based on the length and quality of his/her service to the institution. An
 566 administrator retiring with the rank of the Dean or above may be designated as Dean
 567 Emeritus, etc.

568 Procedure: The retiring faculty member may initiate the process for obtaining Emeritus
 569 status, through a formal request to their department Chair. The department Chair on behalf

570 of the retiring faculty member may also initiate this process. The Chair will make a written
 571 recommendation to the Dean of the college with documentation of the faculty member's
 572 service, usually his/her *curriculum vitae*. If the Dean concurs, the Dean forwards the
 573 recommendation to the Executive Vice President for Academic Affairs and Provost. If the
 574 Executive Vice President for Academic Affairs and Provost concurs, the Executive Vice
 575 President for Academic Affairs and Provost seeks approval from the Board. If approved, the
 576 Executive Vice President for Academic Affairs and Provost shall notify the faculty member
 577 in writing of the award of Emeritus Faculty status. If the retiring faculty member is a
 578 department Chair, the Dean initiates the request. For administrative titles at the level of
 579 Dean or above, the next highest administrator initiates the recommendation.

580 Benefits: Emeritus status is conferred on the faculty member for life, subject to the same
 581 policies for termination as apply for an active tenured faculty member. The following
 582 university benefits may be made available to all present and future emeritus faculty to
 583 include at a minimum:

- 584 • MUSC ID badge reflecting Emeritus status
- 585 • Continued Access to the university library and certain computer facilities such as email
586 and approved cloud services access
- 587 • Eligibility for continued membership at the Wellness Center at the regular faculty rates
- 588 • Maintenance on a mailing list to receive university related news, announcement and
589 invitations to events as appropriate.

590 Other benefits may be negotiable with the college/department. All benefits are subject to
 591 administrative review and the availability of resources.

592 **4.06.02 Distinguished University Professor**

593 Definition: The title of Distinguished University Professor is an honorary title given to a
 594 senior level faculty member who has had a distinguished academic career in teaching,
 595 service or research. It is conferred in writing by the Executive Vice President for Academic
 596 Affairs and Provost upon the recommendation of the department Chair and the Dean of the
 597 college, following approval of the Board. Upon retirement, the faculty member may use the
 598 title of Distinguished University Professor Emeritus.

599 Eligibility: Distinguished University Professor status is generally reserved for regular, full-
 600 time senior or retiring faculty at the rank of Professor. This high honor is reserved for those
 601 faculty members who have made outstanding contributions to their professions and have
 602 achieved national and/or international recognition for their accomplishments.

603 Procedure: Consideration of a faculty member for the title of Distinguished University
 604 Professor within the colleges will comply with the college level process for appointment and
 605 promotion. If the Dean approves the request within the college, the Dean forwards the
 606 recommendation to the Executive Vice President for Academic Affairs and Provost with
 607 documentation substantiating the request. If the Executive Vice President for Academic
 608 Affairs and Provost concurs, the Executive Vice President for Academic Affairs and Provost

609 seeks approval from the Board. If approved, the Executive Vice President for Academic
 610 Affairs and Provost shall notify the faculty member in writing of the award of Distinguished
 611 University Professor. If the candidate is a department Chair, the Dean initiates the request
 612 with consideration by the college Appointment, Promotion, and Tenure committee.

613 Benefits: Status as a Distinguished University Professor is conferred on the faculty member
 614 for life, subject to the same policies for termination as apply for an active tenured faculty
 615 member. The Distinguished University Professor will automatically be eligible for all the
 616 benefits conferred upon the Emeritus faculty, if he/she is retiring from active service.

617 **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	

618 The primary appointment of a faculty member holding joint/dual appointments is confirmed
 619 by the Executive Vice President for Academic Affairs and Provost. If a faculty member
 620 resigns his primary appointment or if his primary appointment is otherwise terminated, all
 621 dual and/or joint appointments in other departments or colleges are terminated the date the
 622 primary appointment is terminated. If a change of status is to be requested by the chair of the
 623 department in which the dual or joint appointment rests, such a request is submitted as a
 624 primary faculty appointment through the appropriate channels.

625 The following terms are descriptive of appointments in more than one unit of MUSC, or
 626 between MUSC and some other institution. These terms may be used with all of the above
 627 modifiers and ranks as appropriate.

628 **4.07.01 Joint**

629 A faculty member who holds a coordinated appointment in two or more colleges of MUSC
 630 or between MUSC and some other institution of higher learning holds a joint appointment.

631 **4.07.02 Dual**

632 A faculty member who holds an appointment between or among two or more departments
 633 within the same college holds a dual appointment.

634

635
636

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	

637
638
639
640
641
642
643

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.

644
645

Current links to College-specific Appointment, Promotion, and Tenure Polices can be found below:

646

College of Dental Medicine:

647

<https://education.musc.edu/colleges/dental/about/resources/development>

648

College of Health Professions:

649

http://academicdepartments.musc.edu/chp/academic_faculty-affairs/index.htm

650

College of Medicine:

651
652

<https://horseshoe.musc.edu/university/colleges/com/musc-appointments-promotion-and-tenure-information>

653

College of Nursing:

654
655

<https://portal.musc.edu/nursing/CON%20Intranet/Resources/Faculty%20Handbook/Section%20V.pdf>

656

College of Pharmacy:

657
658

http://academicdepartments.musc.edu/faculty_senate/essential_docs/promotion/pharm.html

659

College of Graduate Studies:

660 http://academicdepartments.musc.edu/grad/faculty_resources/grad_fac_app_info.htm

661 Academic Affairs Faculty:

<https://education.musc.edu/colleges/aaf/policies>

662

663 **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	

664 **Purpose:**

665 Each college and general faculty unit will have an Appointment, Promotion and Tenure
 666 (APT) Committee. In addition to reviewing initial appointments, this committee shall
 667 evaluate faculty seeking promotion, tenure and review of tenured faculty. Colleges may
 668 choose to have a subcommittee of the APT that will exclusively evaluate initial tenure and
 669 review of tenured faculty. Any subcommittee must follow the guidelines for composition.
 670 The college APT committee will be advisory to the Dean.

671 **Composition:**

672 The Dean may determine the composition of the committee by either appointment or
 673 election, as long as the composition of the committee meets the following guidelines. The
 674 term of membership should be three years in length for both elected and appointed members,
 675 and may be renewed once. One-third of the committee shall be appointed or elected each
 676 year.

677 If the college has multiple tracks (educator/clinician, educator/researcher) faculty
 678 representatives from each track should be represented on the committee.

679 Administrators who serve in a supervisory role to faculty members being evaluated for
 680 promotion/tenure (e.g., deans, department chairs), and thus have other avenues for input into
 681 the promotion/tenure process, shall be excluded from the college APT committee. Division
 682 Directors and program directors who have already had input into an individual's evaluation
 683 should be excluded from deliberation and voting on that individual if they are on the
 684 committee.

685 The committee should consist of a minimum number of four. There shall be no maximum
 686 number.

687 Only faculty at or above the rank, for which the individual is being considered, may vote on
 688 decisions involving promotion.

689 Only tenured faculty may vote on decisions involving individuals seeking tenure, or on
 690 review of tenured faculty.

691 If there are insufficient numbers of tenured faculty available to meet the above guidelines,
 692 non-tenured faculty may serve in their place, at the discretion of the Dean.

693 **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	

694 **5.02.01 Criteria for Appointment**

695 Each college, through its Appointment, Promotion, and Tenure Committee, shall develop
 696 and publish a set of criteria which has been approved by the Executive Vice President for
 697 Academic Affairs and Provost through appropriate channels, and which will be used in the
 698 appointment of new faculty members. Such criteria should reflect the specific missions of
 699 the individual colleges and should be formulated to promote faculty excellence within the
 700 institution as a whole.

701 **5.02.02 Procedures for Appointment**

702 Appointments to the faculty ordinarily are initiated by the department chair. Academic
 703 appointments at the level of department chairman or higher usually are initiated by the
 704 administrative officer of the next higher rank.

705 The department chair shall consult with the departmental faculty of equal or superior rank to
 706 the prospective appointee or with the departmental Appointment, Promotion, and Tenure
 707 Committee before nominations are forwarded to the dean.

708 Upon approval by the dean, requests for appointment shall be forwarded to the Executive
 709 Vice President for Academic Affairs and Provost for approval. If departmental affiliation
 710 within a college is not involved, the requests shall be initiated by the appropriate dean and
 711 addressed to the Executive Vice President for Academic Affairs and Provost. If collegial
 712 affiliation is not involved, the requests shall be initiated by the Executive Vice President for
 713 Academic Affairs and Provost and addressed to the President. Upon such approval,
 714 recommendations for appointment shall be forwarded to the President.

715 Appointments to the rank of Assistant Professor without tenure and below shall be made by
 716 the President. On the recommendation of the President, appointments to any rank with
 717 tenure, and all appointments to the rank of Associate Professor or Professor shall be made
 718 by the Board.

719 When a faculty member holding a modified rank or special appointment is considered for a
 720 change to a regular non-modified rank, the appointment shall follow the established
 721 procedures for initial appointment.

722 **5.02.03 Term of Appointment**

723 Appointment of faculty members with respect to term is of three types:

- 724 • A twelve (12) month appointment
- 725 • A nine (9) month appointment
- 726 • Appointment for other specified periods of time

727 Appointments are made on an annual basis: Twelve (12) month appointments usually begin
 728 July 1st. Appointments for time periods other than twelve (12) months span the academic
 729 year of the college of primary responsibility. The initial letter of appointment and/or contract
 730 and subsequent written notification of reappointment specifying the salary, rank, term of
 731 appointment, and tenure status, is given by the department chairman or other responsible
 732 administrative officer with the approval of the Executive Vice President for Academic
 733 Affairs and Provost.

734 **Term of Appointment for Non-Tenured Faculty:**

735 Any change in term of appointment for non-tenured faculty must be based upon documented
 736 evidence of financial exigencies or impending financial exigencies or of need for program
 737 redirection to insure the viability of a department or college. Efforts to make suitable
 738 reassignments of affected personnel will be made by the responsible administrative officers
 739 should the faculty desire to retain his or her original term of appointment.

740 The recommendation and rationale for faculty term of appointment changes must be written
 741 by the Dean or responsible administrative officer and submitted to the Executive Vice
 742 President for Academic Affairs and Provost for approval. Following approval by the
 743 Executive Vice President for Academic Affairs and Provost, written notice of the intention
 744 to change the term of appointment of a non-tenured faculty member shall be given, to the
 745 extent that appropriated funds are available and legislation permits, as follows:

- 746 (1) At least three [3] months prior to the expiration of the contract for faculty under his or her
 747 initial faculty appointment.
- 748 (2) At least six [6] months prior to the expiration of the contract for faculty appointed under a
 749 second-year contract.
- 750 (3) At least one [1] year prior to the expiration of the contract for faculty under a third [3rd]
 751 year or subsequent-year contract.

782 recommendations to the President. The President reviews the recommendations submitted
 783 by the Executive Vice President for Academic Affairs and Provost, renders decisions, and,
 784 when required, submits recommendations to the Board.

785 The dean is responsible for notifying the faculty member in writing of any action taken in
 786 regard to promotion by the Executive Vice President for Academic Affairs and Provost or
 787 the President, and where applicable, also by the MUSC Board. The department chair notifies
 788 the faculty member in writing regarding salary for the forthcoming fiscal year.

789 Promotions are approved by the Board of Trustees and made effective on either January 1 or
 790 July 1 each year.

791 **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	

792 Tenure shall be the assurance of continuous appointment to a particular faculty rank, with
 793 continuation of salary commensurate with the rank, as long as duties are performed in
 794 accordance with accepted standards, subject to termination for cause, upon retirement, on
 795 account of financial exigency, or the change or abolition of institutional programs. Tenure
 796 rests in the college or department of primary appointment only. The initial letter of
 797 appointment and/or contract and annual renewals shall specify status with regard to tenure.

798 The following full-time faculty are not eligible for tenure: (a) faculty holding limited term
 799 appointments and (b) faculty holding modified ranks or special appointments as designated
 800 in Sections 4.02, 4.03, 4.04, and 4.05.

801 The tenure of a faculty member who also holds an administrative position, such as dean or
 802 department chair, extends only to the faculty position s/he holds conjointly with such an
 803 administrative position.

804 The assurance of continuation of salary shall apply to compensation based on academic
 805 rank, as defined in the annual contract (See Section 5.10). It shall not apply to additional
 806 compensation including, but not limited to, clinical practice income, consultation fees,
 807 administrative supplements, and special payments.

808 **5.04.01 Criteria for Tenure**

809 The faculty member must demonstrate competence and promise of long-term usefulness to
 810 the missions and programs of the university to be considered for tenure.

811 Each college, through its Appointment, Promotion, and Tenure Committee shall develop a
 812 set of criteria to be used in the consideration of granting tenure and which shall have
 813 received the approval, through appropriate channels, of the Board. Each committee also
 814 shall publish and distribute these criteria to its faculty. Such criteria should reflect the
 815 specific missions of the individual colleges and should be formulated to promote faculty
 816 excellence within the institution as a whole.

817 **5.04.02 Procedures for Granting Tenure**

- 818 (1) The department chair or her/his designee initiates and forwards a recommendation to the
- 819 dean after consultation with the departmental Appointment, Promotion and Tenure
- 820 Committee and, where appropriate, with students, faculty outside the department, and
- 821 professional colleagues. After consideration, the college Appointment, Promotion and
- 822 Tenure Committee submits its recommendation to the dean.
- 823 (2) The dean reviews recommendations and forwards approved recommendations to the
- 824 Executive Vice President for Academic Affairs and Provost, and through him/her to the
- 825 university Tenure Committee. The recommendations of the University Tenure Committee
- 826 are reviewed by the Executive Vice President for Academic Affairs and Provost and
- 827 approved recommendations are then forwarded to the President and the Board for final
- 828 action.
- 829 (3) If the recommendation for tenure is disapproved, the faculty member shall be notified of
- 830 the disapproval and the reason for it prior to the tenure deadlines.
- 831 (4) Tenure ordinarily becomes effective once a year on January 1.

832 **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	

833 At every stage of a faculty member's career, the division Director and/or department Chair
 834 will review the faculty member's performance through the annual review process and
 835 reviews for promotion and tenure. Post-tenure review serves to evaluate a tenured faculty
 836 member's professional ongoing contributions and value to the university. During these
 837 reviews, efforts should be made to identify realistic long-range goals for career
 838 enhancement, evaluate the faculty member's strengths and weaknesses in performance, and,
 839 through appropriate advice and action, provide opportunities to correct any weaknesses to
 840 enable the faculty member to realize her/his full professional development. The review
 841 should be used to ensure that all tenured faculty members: (a) continue to perform at a level
 842 to achieve their long and short range career goals and (b) serve the needs of the students and
 843 the institution.

844 All tenured faculty members are subject to post-tenure review. There are two mechanisms of
 845 post-tenure review: a streamlined post-tenure review (described in 5.05, subsection 2 below)
 846 and a full post-tenure review (described in 5.05, subsection 4 below). A streamlined post-
 847 tenure review occurs every six years for those who have been evaluated as adequate or
 848 superior in each of the six years. The full post-tenure review occurs either every six years if
 849 a faculty member has received an inadequate evaluation during the prior six years, or is
 850 triggered if a faculty member's performance is deemed to be inadequate in two consecutive
 851 years. In either mechanism, the post-tenure review is reliant on the annual review.

852 1) **Each tenured faculty member undergoes annual reviews.** The faculty member's
 853 annual review is integral in determining performance. The department Chair/division
 854 Director will use the three-point scale for annual reviews (below, meets or exceeds
 855 expectations). If a faculty member is rated as below expectations in a majority of
 856 applicable performance categories, they will receive a "below expectations" overall
 857 evaluation. Each year, the faculty member must be made aware of specific
 858 requirements to attain an adequate annual review so that he or she is given the
 859 chance to meet these specific requirements.

860 2) **If the tenured faculty member receives no ratings of below, they undergo**
 861 **streamlined post-tenure review every sixth year.** For a tenured faculty member
 862 who has received overall ratings of meets or exceeds expectations in all annual
 863 performance evaluations in the preceding six years, the department Chair/division
 864 Director will send a letter to the Appointment, Promotions and Tenure (APT)
 865 Committee of the faculty member's college stating that the faculty member satisfies
 866 the requirements of a favorable post-tenure review. A copy of this letter will be sent
 867 to the faculty member under review and the college Dean, and placed in the faculty
 868 member's personnel file. The faculty then starts a new six-year cycle.

869 3) **If the faculty member receives an overall rating of below in a majority of**
 870 **applicable performance categories, they undergo a full post-tenure review.**
 871 There are two mechanisms that lead to a full post-tenure review: (i) If a faculty
 872 member has received a below in a majority of applicable performance categories
 873 evaluation during the six-year cycle, the faculty member is subject to full post-tenure
 874 review at the end of that cycle (see (b) below), or (ii) If the faculty is rated as below
 875 in a majority of applicable performance categories in two consecutive years, a full
 876 post-tenure review is triggered, which starts after the second year of the
 877 performance-improvement plan (see (c) below).

878 a) **Upon the first rating of below in a majority of applicable performance**
 879 **categories in an annual review, a Performance-Improvement Plan (PIP) is**
 880 **implemented.** If a tenured faculty member is rated below in a majority of
 881 applicable performance categories on an annual evaluation, the department
 882 Chair/division Director shall meet with the faculty member to outline the steps of
 883 improvement to be taken to correct the deficiencies, to establish criteria for the
 884 satisfaction of those deficiencies and to indicate what resources are available to
 885 support the plan, as appropriate. This Performance-Improvement Plan (PIP)
 886 should be approved by the college Dean, reported to the Executive Vice
 887 President for Academic Affairs and Provost, and described in the associated

888
889
890
891
892
893

894
895
896
897
898
899
900
901
902
903
904

905
906
907
908
909
910
911
912
913
914
915
916
917

918
919

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.

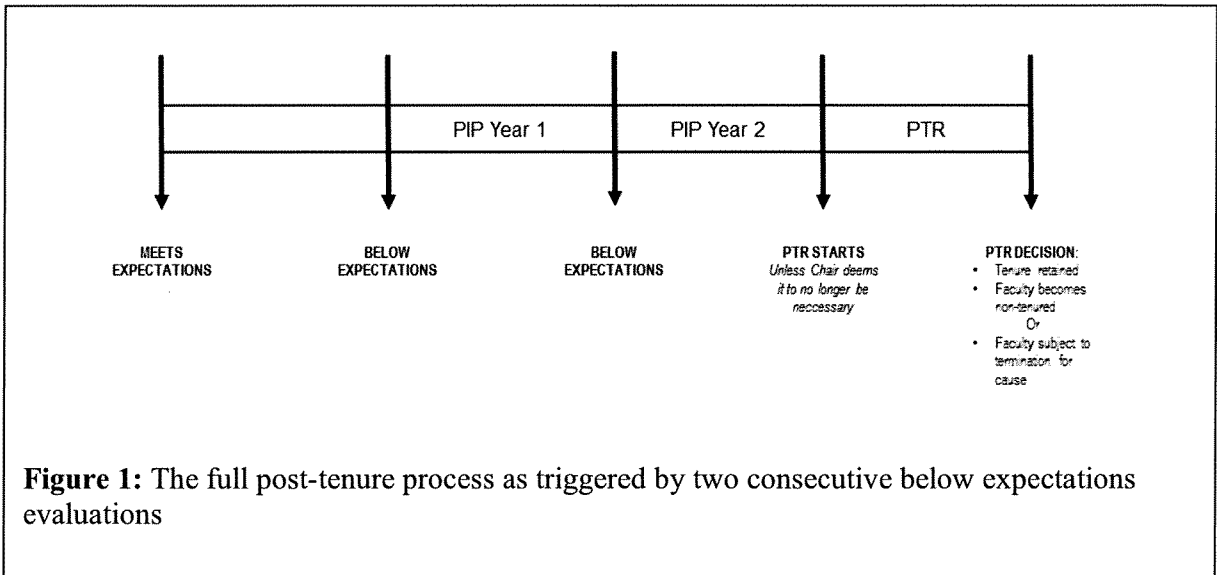


Figure 1: The full post-tenure process as triggered by two consecutive below expectations evaluations

920

921 **4) Full Post-Tenure Review:** The full post-tenure review is initiated by the department
 922 Chair/division Director or supervising administrator. The department Chair/division Director
 923 submits a letter to the college APT Committee detailing the deficiencies of the faculty
 924 member under review with corroborating documentation. The department Chair/division
 925 Director must also notify the college Dean and the Executive Vice President for Academic
 926 Affairs and Provost. A copy of the letter will also be sent to the faculty member under
 927 review and placed in the faculty member’s personnel file.

928 The charge of the college APT Committee is to recommend for or against the removal of
 929 tenure. The college APT Committee will review the faculty member's performance based
 930 upon written standards and criteria that are developed by the individual college APT
 931 Committees. The criteria should reflect the specific missions of the individual colleges and
 932 the university. Each college APT Committee shall publish and distribute these criteria to its
 933 faculty. The basic standard for evaluation shall be whether the faculty member under review
 934 discharges the duties appropriately associated with her or his position as documented by
 935 annual faculty contracts and the initial offer letter for the position, if applicable. The review
 936 must also be flexible enough to acknowledge different expectations in different disciplines
 937 and changing expectations at different stages of faculty careers. In reviewing a faculty
 938 member's performance, the college APT Committee will recognize not only the diverse
 939 talents, activities and accomplishments of faculty within that college, but also that individual
 940 faculty are expected, in consultation with their department Chair/division Director, to focus
 941 their efforts in selected areas of endeavor. The college APT Committee will also verify that
 942 an adequate environment was provided by the department Chair/division Director to support
 943 the faculty member in performance of these directives. The college APT Committee must
 944 include a tenured MUSC faculty member from outside of the college to review the faculty
 945 member’s performance. The department Chair/division Director may suggest outside
 946 reviewers to the APT Committee.

947 (a) For its deliberations, the college APT Committee will utilize the following:

948 (i) A full report on the faculty member will be prepared by the department Chair/division
 949 Director, consisting of copies of the previous six years' annual performance evaluations
 950 conducted by the department Chair/division Director using the
 951 college/department/division specific faculty performance evaluation forms, and when
 952 applicable, written summaries that document deficiencies and plan(s) of remediation, plus
 953 the Chair's letter outlining efforts to remedy the deficiencies, supplemented by any other
 954 documents and information that the department Chair/division Director wishes to submit.

955 (ii) The faculty member under review shall be given the opportunity to appear before the
 956 committee and/or submit any documents that he or she wishes to be considered. During
 957 the time in which the post-tenure review process is being conducted, the faculty member
 958 can submit new materials relevant to the consideration as they become available.
 959 Examples of types of documents that a faculty member may wish to submit include:
 960 evaluations of teaching performance, documentation related to service and clinical
 961 practice, evidence of research or scholarship and any other material regarding activities
 962 pertinent to the college's mission.

963 (iii) The college APT Committee may request the submission of further documentation in
 964 addition to that provided by the department Chair/division Director.

965 (b) After completing their review, the college APT Committee shall submit a written
 966 report to the department Chair/division Director. The report, which shall be a permanent part
 967 of the faculty member's personnel file, will contain:

968 (i) An evaluation of the faculty member's performance and progress, including the
 969 perceived strengths and weaknesses.

970 (ii) An analysis of the faculty member's potential for further professional development. If
 971 applicable, opportunities for development should be identified (*e.g.*, encouragement of
 972 research initiatives, potential mentorships in teaching and research, or appropriate
 973 professional development courses that could be taken).

974 (c) The college APT Committee shall forward the report to the college Dean with a
 975 clear recommendation for retention of tenure when the faculty member, in the Committee's
 976 judgment, is rated superior or adequate. A rating of inadequate by the college APT
 977 Committee shall be forwarded to the college Dean with a recommendation pertaining to
 978 tenure. The written report and recommendation of the APT committee shall be provided
 979 simultaneously to the faculty member under review and the Dean. The college Dean reviews
 980 the recommendation and if he or she determines the removal of tenure is warranted,
 981 forwards the recommendation to the Executive Vice President for Academic Affairs and
 982 Provost for review and action by the University Tenure Committee. The college Dean shall
 983 provide to the faculty member, department Chair/division Director and college APT
 984 Committee memoranda indicating her/his action.

985 (d) If the University APT Committee, after a full hearing of the case, supports the
 986 recommendation for removal of tenure, this recommendation will be forwarded to the

987 Executive Vice President for Academic Affairs and Provost. The faculty member then has
 988 the option to file a Grievance and Appeal Procedure, as described in the *Faculty Handbook*
 989 (Section 8.02). The Executive Vice President for Academic Affairs and Provost will make
 990 the final determination and, if necessary, make a recommendation to the Board of Trustees
 991 for action.

992 If the Executive Vice President for Academic Affairs and Provost's decision and, if used,
 993 the Grievance and Appeal Procedure, results in the decision to remove the faculty member's
 994 tenure, there are two possible outcomes: the faculty will continue as a non-tenured faculty or
 995 the faculty member will be subject to termination for cause under Section 9.01 of the
 996 *Faculty Handbook*. In the event of termination for cause, the process of full post-tenure
 997 review will have fulfilled Section 9.02 of the *Faculty Handbook*.

998 **Policies:** The following policies are applicable to post-tenure review:

999 (a) The full post-tenure review process, as described above in 4), must be concluded
 1000 within 12 months. Responsibility for adhering to this timetable rests with the Executive Vice
 1001 President for Academic Affairs and Provost's office.

1002 (b) The outcomes of all evaluations shall be confidential; that is, confined to the
 1003 appropriate college or university persons or bodies and faculty member being evaluated, and
 1004 shall be released only with the written consent of the faculty member.

1005 (c) In accordance with the review process mandated by the *Faculty Handbook*, the
 1006 above policy and standards and criteria developed to carry out this policy should be
 1007 evaluated with respect to the effectiveness in supporting faculty development and redressing
 1008 problems of faculty performance.

1009 **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	

1010 The State of South Carolina requires that all state universities and colleges evaluate faculty
 1011 performance. In order to comply with this requirement, MUSC has developed a faculty
 1012 evaluation procedure which has been approved by the division of Human Resources of the
 1013 State Budget and Control Board.

1014 Each college of the university has an approved Performance Appraisal form (faculty
 1015 evaluation). Consult with respective Dean's Office for copies of these forms. The form is
 1016 completed annually for each member, and is kept in a permanent file under the purview of

1017 the dean or director. The faculty member has a right to full disclosure of the Performance
 1018 Appraisal.

1019 The faculty member is required to sign the appraisal, indicating s/he has read the evaluation
 1020 form, but has the right to make written comments concerning agreement or disagreement
 1021 with the evaluation.

1022 College of Health Professions:

1023 [http://academicdepartments.musc.edu/chp/academic-faculty-affairs/faculty-
 fa/faculty_evaluation.htm](http://academicdepartments.musc.edu/chp/academic-faculty-affairs/faculty-

 1024 fa/faculty_evaluation.htm)

1025 College of Dental Medicine:

1026 <https://education.musc.edu/colleges/dental/about/resources/development>

1027 College of Medicine:

1028 <http://academicdepartments.musc.edu/com/faculty/apt/forms/FacPerfEval.doc>

1029 College of Nursing:

1030 [https://horseshoe.musc.edu/university/colleges/college-of-nursing/faculty/resources/faculty-
 evaluation-and-process-forms](https://horseshoe.musc.edu/university/colleges/college-of-nursing/faculty/resources/faculty-

 1031 evaluation-and-process-forms)

1032 College of Pharmacy:

1033 The MUSC COP Evaluation form is located inside of the Faculty Resources File within
 1034 MUSC Box –COP

1035 Academic Affairs Faculty:

1036 <http://colbert.library.musc.edu/dlsifac/>

1037 **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
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

1038 Salary increases for faculty members will be distributed as merit based increases.
 1039 When funds are designated for faculty salary increases, the amount and the procedure for
 1040 allocation of these funds will be communicated to the faculty.

1041 All funds will be distributed as merit increases, based on the approved Faculty Performance
 1042 Evaluation Form, which is mentioned in Section 5.06 of the university *Faculty Handbook*.

1043 **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	

1044 The assignment of a faculty member's division of responsibilities between academic
 1045 activities is initially specified in the letter of offer and initial contract. Review and,
 1046 eventually, reevaluation of division of obligations is carried out as part of the annual
 1047 evaluation, at which time the faculty member and supervisor mutually agree upon any
 1048 changes in the balance of instruction/teaching, scholarly activity, administrative
 1049 responsibilities, community services, and, when applicable, clinical services, in keeping with
 1050 the mission of the Medical University. The faculty member and the supervisor sign the
 1051 Performance Evaluation Form, on which the percent effort for various
 1052 assignments/responsibilities is outlined in writing. Should an agreement not be reached,
 1053 either the faculty member or Chair will proceed under policies detailed in Section 8 of the
 1054 *Faculty Handbook*.

1055 **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	

1056 Faculty members have the right to review their personnel file upon written notification to
 1057 their department chair and/or dean. Faculty members may make additional submissions
 1058 and/or provide explanations of errors or omissions. Such additions shall become a part of the
 1059 permanent file. Nothing herein shall grant the faculty member a right to purge or remove
 1060 anything in their personnel file without prior written consent of their direct supervisor and
 1061 the dean of the college.

1062

1063

1064 **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
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

1065 [https://education.musc.edu/-/sm/education/faculty/faculty-senate/f/approved-faculty-](https://education.musc.edu/-/sm/education/faculty/faculty-senate/f/approved-faculty-contract.ashx?la=en)
 1066 [contract.ashx?la=en](https://education.musc.edu/-/sm/education/faculty/faculty-senate/f/approved-faculty-contract.ashx?la=en)

1067

1068 **6. FACULTY DEVELOPMENT**

1069 **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	

1070 A faculty member holding the rank of Professor or Associate Professor who has rendered six
 1071 or more years of satisfactory service to MUSC may be granted sabbatical leave in order to
 1072 study or undertake further training. Sabbatical leave is for the primary purpose of enhancing
 1073 the value of the professional status of the faculty member in further service to the Medical
 1074 University. The period for sabbatical leave may be for up to one year. Salary support during
 1075 this period will be at the rate of one month for each year of service to MUSC, up to a
 1076 maximum of twelve months salary.

1077 A sabbatical leave may be granted by the Board upon recommendation by the President,
 1078 following approval by the department Chair, the Dean of the college concerned, and the
 1079 Executive Vice President for Academic Affairs and Provost, and with the understanding that
 1080 the faculty member will return to active service MUSC when such leave has ended.

1081 During sabbatical leave, annual leave accrual is prorated according to the percentage of the
 1082 MUSC salary paid to the faculty member (i.e., a faculty member receiving half-pay from the
 1083 university while on sabbatical leave would accrue one-half of full annual leave entitlement.
 1084 Upon return, it is incumbent upon a faculty member receiving partial pay while on
 1085 sabbatical to request that his/her department submit a leave correction form to ensure that
 1086 the full annual leave entitlement is reinstated.

1087 In accord with the state Sick Leave Act, faculty members will not accrue sick leave while on
 1088 sabbatical leave.

1089 Benefits may continue during a sabbatical leave, but the faculty member **MUST** contact the
 1090 Benefits Section of the Department of Human Resources Management for advice on what
 1091 action is required to maintain current benefits. To prevent loss of benefits, it is essential that
 1092 the faculty member contact Human Resources Management at least 60 days prior to
 1093 beginning sabbatical leave.

1094

1095 **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	

1096 **PURPOSE:** This policy is intended for the primary purpose of enhancing the value of the
 1097 professional status of the faculty member in further service to MUSC. The university,
 1098 therefore, upon prior approval of the dean of the college in which s/he holds primary
 1099 appointment, offers the faculty member who does not possess a terminal degree in her/his
 1100 field an opportunity to pursue a planned program for upward mobility toward an advanced
 1101 degree.

1102 **ELIGIBILITY:** Full-time faculty members with no modifiers to their ranks are eligible to
 1103 apply for admission to an advanced degree program under this policy.

1104 **6.02.01 Academic Requirements**

- 1105 1) In any course of study pursued toward a degree, the faculty member shall meet the same
- 1106 requirements for the degree, as published in the University Bulletin, as any other student.
- 1107 2) The student/faculty member will be required to meet the regularly scheduled class times
- 1108 in courses in which s/he is enrolled.
- 1109 a) Student laboratory assignments that can be accomplished outside of the faculty
- 1110 member's normal working time may be made an exception, if approved IN
- 1111 ADVANCE by the deans and department chairs concerned.
- 1112 b) If his/her duties and responsibilities as a faculty member conflict with his/her student
- 1113 class hours, his/her faculty responsibilities shall take precedence. This is to be
- 1114 determined by the deans involved.
- 1115 3) The faculty member seeking an MUSC degree will be required to demonstrate his/her
- 1116 academic progress to a committee of qualified evaluators at least once each year by
- 1117 means of either a written and/or oral examination. The results of the evaluation will be
- 1118 submitted by this committee to the dean of the college in which the degree is being
- 1119 pursued and to the department chair, if appropriate. This dean shall file a copy of the
- 1120 report with the Executive Vice President for Academic Affairs and Provost.
- 1121 4) Failure to perform in a satisfactory manner at any time shall be reported to the Executive
- 1122 Vice President for Academic Affairs and Provost by the dean involved.
- 1123 5) No deviation from the approved plan of study will be permitted without a written request
- 1124 from the department chairs, the recommendation of the deans, and the approval of the
- 1125 Executive Vice President for Academic Affairs and Provost. Such approval for an
- 1126 amended study plan shall be filed in the student/faculty member's record in the office of
- 1127 the University Registrar.

1128 **6.02.02 Financial Considerations and Requirements as a Faculty Member**

- 1129 1) The faculty member who has been admitted as a student to a degree program in at the
 1130 Medical University or elsewhere must abide by the following if s/he is to receive
 1131 financial considerations by the university:
 1132 a) promotion as a faculty member may be denied during the period of time the degree
 1133 program is in progress.
 1134 b) faculty salary increases other than "across the board" raises may be denied.
 1135 c) obtaining of the degree in no way obligates MUSC to alter his/her initial faculty
 1136 appointment, to promote him/her, or to significantly adjust his/her salary, although
 1137 any or all of these may be a result.
 1138 d) s/he shall agree, in writing, to continue his/her employment to MUSC for a period of
 1139 not less than one year after receiving the degree.
 1140 2) The faculty member who agrees to the above financial terms may pursue his/her
 1141 approved plan of study at the yearly average rate of 15% of his/her normal work time,
 1142 with no reduction in salary.
 1143 3) If an accelerated plan of study is requested by the faculty member and is approved by the
 1144 chair, deans, and the Executive Vice President for Academic Affairs and Provost, the
 1145 faculty member must voluntarily reduce both her/his teaching responsibilities and her/his
 1146 salary proportionately.
 1147 4) If the approved plan of study includes extensive bench research or clinical rotations
 1148 during normal faculty working time, a proportionate salary reduction shall be required. If
 1149 this is determined at the time the program is initially approved, the amount of salary
 1150 reduction will be determined at that time.

1151 **6.02.03 Financial Requirements as a Student**

- 1152 1) While pursuing his/her approved plan of study, the student/faculty member will officially
 1153 register for each course taken and pay the appropriate tuition and fees as set by the
 1154 college in which s/he is enrolled. In the year in which the degree is to be conferred, the
 1155 student/faculty member shall pay, in addition to the required tuition, the full fees required
 1156 of all students.
 1157 2) If an accelerated plan, as described in Section 6.02.02 under "Financial Considerations
 1158 and Requirements as a Faculty Member," is in effect, the student/faculty member must
 1159 pay the appropriate tuition each semester.

1160 **6.02.04 Procedure for Faculty Member**

- 1161 1) The faculty member shall submit
 1162 a) to the chair of his/her department and the dean of the college in which s/he holds
 1163 primary faculty appointment, and if applicable
 1164 b) to the dean of the college in which s/he proposes to pursue the advanced degree, a
 1165 complete outline of the proposed curriculum, semester by semester. S/he shall also
 1166 indicate all courses to be taken, the proposed research and/or clinical experience
 1167 required, and the degree which is to be sought.
 1168 2) If the faculty member's proposal is disapproved at any step in the Administrative
 1169 Procedure stated below, s/he will be so notified; this action shall be considered final.

- 1170 3) If the faculty member's proposal is approved, the Executive Vice President for Academic
- 1171 Affairs and Provost will notify him/her in writing and s/he may then proceed to apply for
- 1172 admission through the regularly prescribed admissions policy of the college in which s/he
- 1173 is seeking admission.
- 1174 4) The application for admission shall have attached to it the following:
- 1175 a) outline of plan of study
- 1176 b) letter of approval from the Executive Vice President for Academic Affairs and
- 1177 Provost to pursue the degree as outlined
- 1178 c) required application fee.

1179 **6.02.05 Administrative Procedure**

- 1180 1) Upon receipt of a request with attachment thereto of a complete outline of proposed study
- 1181 as stated under "Procedure for Faculty Member" above, to pursue admission to a specific
- 1182 advanced degree program within a college of the Medical University, the dean(s) of the
- 1183 college(s) concerned in conjunction with the appropriate department chairs either approve
- 1184 or disapprove the request. If more than one dean is concerned (i.e., if the dean of the
- 1185 college of proposed study is different from the dean of the college in which the faculty
- 1186 member holds primary appointment), approval to apply for admission must be by both.
- 1187 Either one disapproving, the request shall be denied.
- 1188 2) If the request is approved, the dean of the college in which the faculty member holds
- 1189 primary appointment shall write a letter to the Executive Vice President for Academic
- 1190 Affairs and Provost, with a copy to the dean of the college to whom the faculty member
- 1191 will submit his/her application, stating willingness for the faculty member to apply for
- 1192 admission as a student. The letter should include: (a) how all of the individual's duties,
- 1193 teaching responsibilities, and other commitments to his/her department would be met; (b)
- 1194 what financial considerations would apply as described in Section 6.02.02 under
- 1195 "Financial Considerations and Requirements as a Faculty Member," and (c) indication of
- 1196 approval of the plan of study.
- 1197 3) In like manner, if the request is approved, the dean of the college of proposed student
- 1198 enrollment shall notify the Executive Vice President for Academic Affairs and Provost in
- 1199 writing of: (a) procedures for evaluation of the faculty member's progress as a student in
- 1200 accordance with his/her approved plan of study; and (b) the names of the faculty
- 1201 members assigned to evaluate the faculty/student's progress. Such progress will be
- 1202 evaluated in accordance with Subsections (3) and (4) under Section 6.02.01 "Academic
- 1203 Requirements."
- 1204 4) The faculty member shall then be notified in writing by the Executive Vice President for
- 1205 Academic Affairs and Provost that her/his plan of study has been approved and that s/he
- 1206 may apply for admission through the regular admissions process of the college in which
- 1207 the advanced degree is to be sought.

1208 Any time the above procedures or processes are not adhered to, the faculty member, if
1209 admitted to a course of study, may be removed from the college in which s/he is enrolled or
1210 may be required to reimburse MUSC for any financial losses suffered either as a result of
1211 being a student and/or a faculty member.

1236 <https://horseshoe.musc.edu/~media/files/hr-files/muha->
 1237 [files/policies/policy17tuitionassistance.pdf?la=en](https://horseshoe.musc.edu/~media/files/hr-files/muha-files/policies/policy17tuitionassistance.pdf?la=en)

1238 **6.05 Travel**

1239 MUSC, as an agency of the State of South Carolina, is subject to the travel guidelines set by
 1240 the State Budget and Control Board: <http://www.state.sc.us/cg/info/disbregs/travel.htm>

1241 **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	

1242 <http://globalhealth.musc.edu/blog/musc-international-travel-policy>

1243

1244

1245 **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	

1246 It is the duty of the faculty to create an environment that is conducive both to the education
 1247 of skilled professionals and to the scholarly pursuits of the faculty. The university provides
 1248 an environment for intellectual development, reasonable working space, and an appropriate
 1249 amount of time for scholarly growth and achievement.

1250 Subject to the approval of the Board, the faculty of each college has jurisdiction over all
 1251 matters pertaining to the curriculum. The faculty has the responsibility for prescribing the
 1252 curriculum, determining academic standards and teaching and examining accordingly. It has
 1253 the responsibility for determining the entrance requirements, determining requirements for
 1254 promotion and dismissal of students, determining the requirements for the graduation of
 1255 students, recommending candidates for degrees and certificates, and enacting rules and
 1256 regulations for the overall guidance of student programs.

1257 The faculty shall serve an advisory function on the appointment, promotion or dismissal of
 1258 faculty and administrators, on the distribution of funds and facilities for education, research
 1259 and service; and on the acquisition of external support for research and other scholarly
 1260 activities.

1261 **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
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

1262 <https://web.musc.edu/about/compliance/conduct>

1263

1264

1265 **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	

1266 A member of the faculty is free to teach and to discuss in classes any aspect of a topic
 1267 pertinent to the understanding of the subject matter of the course which is being taught; to
 1268 act and to speak as a private citizen without institutional censorship or discipline. A member
 1269 of the faculty is free to carry on research and disseminate the results.

1270 **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	

1271 Faculty members should not participate in outside activities that create a conflict of
 1272 commitment with their contractual obligations to the Medical University. A faculty member
 1273 may engage in outside activities, whether for compensation or not, on a limited basis,
 1274 provided that such activities are in keeping with his/her professional practice agreement,
 1275 competency, and development, and do not interfere with the performance of his/her assigned
 1276 duties. Activities such as preparation and presentation of research results, presentation to
 1277 professional groups, peer review activities, and service as members of professional or
 1278 community societies are normally not considered outside activities, i.e., they are within the
 1279 scope of work. Employment of faculty by other state agencies or institutions must be
 1280 accomplished through the procedures established by the state; remuneration is limited by
 1281 law.

1282 Outside activities must be disclosed to the Institution annually as described in the
 1283 MUSC/MUHA Conflict of Interest Policy. Additionally, outside activities must comply with
 1284 the provisions of the MUSC/MUHA Conflict of Interest Policy and the MUSC/MUHA
 1285 Industry Relations Policy. These policies appear in following sections via links to the
 1286 MUSC Conflict of Interest Office. Questions regarding application of these policies can be
 1287 directed to that office.

1288

1289 **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	

1290 Faculty members of the Medical University may undertake civic duties and participate in
 1291 community political activities and, as a general rule, hold municipal or local political offices
 1292 without interference from the Medical University. However, great care should be exercised
 1293 in active political campaigning in state and federal elections. Campaigning for a major state
 1294 or federal government office requires a leave of absence authorized by the President of the
 1295 Medical University. Any faculty member elected to major state or federal government office
 1296 either must obtain a leave of absence authorized by the President or resign from the faculty.

1297 **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	

1298 The faculty of the Medical University of South Carolina engages in a wide variety of
 1299 external activities with public and private organizations. The Medical University endorses
 1300 and subscribes to the principles of the joint statement of the American Council on Education
 1301 and the American Association of University Professors, "On Preventing Conflicts of Interest
 1302 in Government-Sponsored Research at Universities." With the acceptance of a full-time
 1303 appointment to the faculty of the Medical University of South Carolina, the faculty makes a
 1304 commitment to MUSC that such employment is full-time in the most inclusive sense.
 1305 Outside obligations, financial interests, and activities in other areas are not to conflict with
 1306 their commitment to the Medical University of South Carolina.

1307 All faculty and administrative staff shall disclose any conflict of interests using the MUSC
 1308 web based disclosure mechanism, see <https://www.carc.musc.edu/coi>. Such disclosure is
 1309 made on an annual basis as defined by the MUSC/MUHA conflict of interest policy.
 1310 Whenever a new conflict of interest arises or when a significant change occurs concerning
 1311 an existing disclosure, a new disclosure form must be completed and submitted for review
 1312 either in advance of the anticipated change in situation or within 30 days of the event

1313 Infraction of the letter or spirit of this policy constitutes a serious offense, which shall be
 1314 responded to with appropriate action ranging from private reprimands to termination at the
 1315 discretion of the Executive Vice President for Academic Affairs and Provost.

1316 The following policy, governs employee financial conflicts of interest within MUSC,
 1317 MUHA, and our affiliates. Various parts of the institution may have their own sub-policies,
 1318 consistent with this general policy, but specific to their specific areas of activity. Clinical,
 1319 research, and research start-up policies and charters appear on the Conflict of Interest
 1320 website:

1321 <https://web.musc.edu/about/coi/coi-policies>

1322

1323 **7.05.01 Medical University of South Carolina and Medical University Hospital**
 1324 **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	

1325 This policy:

- 1326 • Articulates MUSC's annual disclosure requirements and the institution's responsibility to
- 1327 review, identify and manage potential employee conflicts of interest;
- 1328 • References the SC State Ethics Law which makes it unlawful for public officials, public
- 1329 members, and public employees to use their position to obtain an economic interest or to
- 1330 have a financial interest in most any contract or purchase connected with MUSC/MUHA;
- 1331 and
- 1332 • Fulfills MUSC's obligation as an institution that conducts research funded by the Public
- 1333 Health Service to have a written, enforced policy that complies with 42 CFR Part 50
- 1334 Subpart F - "Responsibility of Applicants for Promoting Objectivity in Research for which
- 1335 Public Health Service Funding is Sought" and 45 CFR Part 94 "Responsible Prospective
- 1336 Contractors" as well as all other relevant policies of federal funding and oversight agencies.

1337 **Persons covered by this policy:**

1338 This policy applies to all Trustees, Officers, Faculty, Administrators, and Staff,
 1339 including all full-time, part-time, temporary, and contract Employees of Medical
 1340 University of South Carolina ("MUSC") and Medical University Hospital Authority
 1341 ("MUHA"). Affiliates (entities which derive their not for profit status from MUSC, such
 1342 as University Medical Associates, the MUSC Foundation, and the MUSC Foundation for
 1343 Research Development) shall as a condition of continued business with MUSC and
 1344 MUHA adopt a policy substantially similar to this Policy, adapted to accommodate those
 1345 affiliate employees who are not public employees.

1346 **Preamble**

- 1347 1) Enhancing the public good through improved health initiatives and superior economic
 1348 development is the foundation of many government policies. MUSC, as a contemporary,
 1349 public research university, has a responsibility to actively participate and promote these
 1350 initiatives even if conflicts of interest are more likely and many times unavoidable.
 1351 Conflicts of interest, therefore, may arise from ordinary and appropriate activities as a
 1352 part of assigned employment duties so the existence of a conflict should not imply
 1353 wrongdoing. When conflicts of interest do arise, however, they must be recognized and
 1354 disclosed, then eliminated or appropriately managed. The Board of Trustees for MUSC
 1355 and MUHA has a duty to govern those State entities in a manner such that conflicts are
 1356 appropriately reviewed and acted on to maintain public confidence in the integrity of our
 1357 institutions.
- 1358 2) This policy provides a framework for recognizing and managing employee conflicts of
 1359 interest, and should minimize even the appearance of conflicts of interest. The primary
 1360 goal of this policy is to prevent an employee's activities from adversely influencing
 1361 MUSC or MUHA operations.
- 1362 3) Particular departments and activities of MUSC or MUHA may have specific conflict of
 1363 interest policies. It is intended, however, that this policy will apply to the entire MUSC
 1364 enterprise, providing a framework for those specific additional policies to operate under,
 1365 such that those specific policies will not supersede this policy unless approved by the
 1366 Board of Trustees.
- 1367 4) This policy references South Carolina Code (S.C. Code § 8-13-10 *et seq.*) (the “Ethics
 1368 Law”), which makes it unlawful for public officials, public members, and public
 1369 employees to use their position to obtain an economic interest or to have a financial
 1370 interest in most any contract or purchase connected with MUSC/MUHA, unless certain
 1371 exceptions apply. This policy is implemented in addition to all requirements of the Ethics
 1372 Law and does not supersede it. The South Carolina Ethics Law is at
 1373 www.scstatehouse.gov/code/t08c013.php
- 1374 5) As MUSC conducts research funded by the Public Health Service and other federal
 1375 agencies, it is required by federal law to maintain an appropriate written, enforced policy
 1376 on conflict of interest that complies with 42 CFR Part 50 Subpart F – “Responsibility of
 1377 Applicants for Promoting Objectivity in Research for which Public Health Service
 1378 Funding is Sought”
 1379 (http://grants.nih.gov/grants/compliance/42_CFR_50_Subpart_F.htm) as well as all other
 1380 relevant policies of federal funding and oversight agencies.

1381 **A. Statement of general policy**

- 1382 1) MUSC/MUHA policy is that its employees conduct the affairs of MUSC/MUHA in
 1383 accordance with the highest legal, ethical and moral standards.
- 1384 2) MUSC/MUHA policy is that employees of MUSC/MUHA shall disclose perceived and
 1385 real conflicts of interest.
- 1386 3) MUSC/MUHA policy is that employees shall not use their position to secure personal
 1387 financial benefits or economic interest for themselves, any member of their immediate
 1388 family, any individuals or entity with whom the employee has a business relationship that

1389 renders an employee economic benefit. A perceived and/or real conflict of interest arises
 1390 whenever the employee has the opportunity to influence university or Authority
 1391 operations or business decisions in ways that could result in a personal financial benefit
 1392 or economic gain to the employee, a member of an employee's immediate family, or
 1393 individuals or entities with whom the employee has a business relationship which renders
 1394 the employee economic benefit. Although certain specific examples of conflicts of
 1395 interest are provided in this policy, they are meant only as illustrations, and supervisors
 1396 and employees are expected to use good judgment to identify possible conflicts of
 1397 interest that may adversely influence MUSC/MUHA operations, and to avoid or manage
 1398 them as appropriate.
 1399 4) This policy is not intended to prohibit approved and appropriately managed economic
 1400 development activities related to MUSC/MUHA generated intellectual property,
 1401 including MUSC/MUHA employee involvement with startup companies, Small Business
 1402 Administration (SBIR/STTR) funded research and Centers of Economic Excellence
 1403 Activities. However, any such activities by MUSC/MUHA employees that make use of
 1404 university or Authority property, facilities, equipment or other resources for personal
 1405 benefit shall be approved as required herein, of benefit to MUSC/MUHA, and for fair
 1406 value.
 1407 5) Nothing in this policy shall be construed to permit, even with disclosure, any activity that
 1408 is prohibited by law.

1409 **B. Definitions**

1410 1) *Conflicts of interest* occur when an employee or immediate family member receives
 1411 personal financial benefit or an economic interest from the employee's position in a
 1412 manner that may inappropriately influence the employee's judgment, compromise the
 1413 employee's ability to carry out MUSC/MUHA responsibilities or, be a detriment to
 1414 MUSC/MUHA integrity.
 1415 2) *Immediate family* includes the employee's parents, spouse, siblings, children,
 1416 stepchildren, and grandchildren.
 1417 3) *Manage and managing* means an affirmative action by the university or the Authority to
 1418 establish parameters or conditions that minimize or eliminate the risk of the perceived or
 1419 real conflict of interest.
 1420 4) *Personal financial benefit or economic benefit* is defined as anything of monetary value,
 1421 including salary, commissions, fees, honoraria, gifts of more than nominal value, equity
 1422 interests, interests in real or personal property, dividends, royalty, rent, capital gains,
 1423 intellectual property rights, loans, and forgiveness of debt. "Personal financial benefit"
 1424 does not include:
 1425 a) compensation or payments received from MUSC/MUHA or any of its affiliates or the
 1426 Ralph H. Johnson Department of Veterans Affairs Medical Center;
 1427 b) payments for participation in seminars, lectures or other educational activities as long
 1428 as not acting in the employee's official capacity, or reasonable expenses for the same
 1429 activities even if acting in official capacity;
 1430 c) payments for participation in seminars, lectures or other educational activities, and
 1431 reasonable expenses for the same activities as long as acting within the context of an
 1432 individual's Faculty Appointment Contract;

- 1433 d) any financial interest arising solely by means of investment in a mutual, pension, or
- 1434 other institutional investment fund over the management and investments of which
- 1435 the employee or an associated immediate family member does not exercise control;
- 1436 and
- 1437 e) investments in publicly traded entities as long as employee owns less than a five
- 1438 percent and/or less than \$10,000 stake in said entity.
- 1439 5) *University* means Medical University of South Carolina.
- 1440 6) *Authority* means the Medical University Hospital Authority.
- 1441 7) *MUSC or MUHA responsibilities* are defined as the responsibilities of an employee to
- 1442 perform MUSC or MUHA activities as defined by management or contract.

1443 **C. Policy provisions**

- 1444 1. An employee shall disclose any situation in which the employee has, or may have, a real
- 1445 or potential conflict of interest as defined herein. These conflicts of interest must be
- 1446 reported annually to the appropriate Conflict of Interest Office. Modifications to existing
- 1447 disclosures or a new activity will require submittal of an additional disclosure in a timely
- 1448 manner. An authorized group of employees shall review the disclosure and recommend to
- 1449 the appropriate Vice President a suitable action plan to eliminate or manage the conflict
- 1450 of interest so as to ensure that MUSC or MUHA business is not improperly influenced or
- 1451 adversely affected. In the event that there is no reasonable way to manage a conflict of
- 1452 interest, then the employee may be prohibited from participating in related
- 1453 MUSC/MUHA affairs until such a time as the conflict is eliminated. In other words,
- 1454 employees and Officers of MUSC/MUHA have a duty to immediately disclose, manage
- 1455 or eliminate any real or potential conflicts of interest that are not in the best interests of
- 1456 the University or Authority.
 - 1457 a. An employee shall disclose conflicts of interest in writing on an approved paper
 - 1458 or digital Conflicts of Interest Disclosure Form, including a statement describing
 - 1459 the nature and extent of the conflict, to their supervisor and to the appropriate
 - 1460 Compliance Office. This disclosure must be completed annually, on a form
 - 1461 designated for such purposes. A new disclosure form must be completed
 - 1462 whenever a new conflict of interest arises or when a significant change occurs
 - 1463 concerning an existing disclosure. See the following Web site for this disclosure
 - 1464 form: Annual Conflict of Interest Disclosure < <https://www.carc.musc.edu/coi> >.
 - 1465 b. If a supervisor becomes aware of a conflict of interest that an employee has not
 - 1466 disclosed, the supervisor shall discuss the situation with the employee, require
 - 1467 that a written disclosure be made as provided in this policy, and inform the Office
 - 1468 of Compliance to anticipate the receipt of a new Disclosure Form.
 - 1469 c. All conflicts of interest shall be reported to the MUSC or MUHA Office of
 - 1470 Compliance. The Board of Trustees or its designee will retain authority to take
 - 1471 such action as it deems appropriate regardless of any action or inaction by an
 - 1472 Officer of MUSC and/or MUHA.
- 1473 2. The following are examples of conflicts of interest requiring disclosure. These examples
- 1474 are illustrations only and are not meant to be exclusive.
 - 1475 a. Employee or immediate family member has a financial interest in a business
 - 1476 entity with which the University or Authority does or proposes to do business, and

- 1477 the employee is in a decision-making role or otherwise is in a position to
 1478 influence the University's or Authority's business decisions regarding the business
 1479 entity. Business entity examples for which an employee disclosure is required:
- 1480 i. finance or accounting services
 - 1481 ii. equipment services
 - 1482 iii. marketing services
 - 1483 iv. construction services
 - 1484 v. consulting
 - 1485 vi. counseling
 - 1486 vii. catering
 - 1487 viii. computer supplies
 - 1488 ix. programming
 - 1489 x. architectural services
 - 1490 xi. legal services
 - 1491 xii. grant preparation
 - 1492 xiii. temporary personnel services
 - 1493 xiv. office or laboratory supplies
 - 1494 xv. painting services
 - 1495 xvi. lawn and grounds services
- 1496 b. Employee holds or assumes an executive, officer or director position in a for-
 1497 profit or not-for-profit business or entity engaged in commercial, educational, or
 1498 research activities similar to those in which the University or Authority engages.
 - 1499 c. Employee participates in consultation activities for a for-profit or not-for-profit
 1500 business or entity engaged in commercial, educational or research activities
 1501 similar to those of the University or Authority.
 - 1502 d. Employee holds or assumes an executive, officer or director position in a for-
 1503 profit or not-for-profit business or entity that does business with the University or
 1504 Authority.
- 1505 3. The activities listed below are prohibited unless sanctioned by an Officer of the
 1506 University or Authority. Sanctioned activities are those activities documented within an
 1507 individual's Faculty Appointment Contract, contained within an employee's job
 1508 description or expectations, appropriately authorized agreements, Memoranda of
 1509 Understanding, or otherwise approved by the employee's Vice President.
- 1510 a. Significant use of University or Authority property, facilities, equipment or other
 1511 resources in any manner other than as part of the employee's responsibilities, that
 1512 results in personal financial benefit or economic interest to an employee, a
 1513 member of an employee's immediate family or business with which the employee
 1514 has a business relationship.
 - 1515 b. Using significant University or Authority property, facilities, equipment or other
 1516 resources in any manner to support an entity not associated with the University or
 1517 Authority unless special permission is provided in writing by an authorized
 1518 Officer of MUSC or MUHA.
 - 1519 c. Using University or Authority stationery, letterhead, logo, or trademark in
 1520 connection with outside activities, other than activities having a legitimate
 1521 relationship to the performance of University or Authority business.

- 1522 d. Using University or Authority facilities, resources, or the employee's position at
- 1523 the University for the purpose of advocating, endorsing, or marketing the sale of
- 1524 any goods or services, other than as part of the employee's responsibilities,
- 1525 without the prior approval in writing by an authorized Officer of MUSC or
- 1526 MUHA.
- 1527 e. Using the University or Authority name, trademark or trade name for personal
- 1528 business or economic gain to the employee, a member of the employee's
- 1529 immediate family or a business with which the employee has a business
- 1530 relationship.
- 1531 f. Using any University or Authority intellectual property data or information that is
- 1532 not in the public domain for personal financial benefit or economic gain to the
- 1533 employee or a member of the employee's immediate family, or a business which
- 1534 the employee has a business relationship.
- 1535 g. Using any University or Authority employee for any outside activity during
- 1536 normal work time for which he or she is receiving compensation from the
- 1537 University or Authority (not applicable when employees are on a paid or unpaid
- 1538 leave).
- 1539 h. Participating in the selection or awarding of a contract between the University or
- 1540 Authority and any entity with which an employee is dually employed, is seeking
- 1541 employment or has been offered employment.
- 1542 i. Other activities may be prohibited if there is no reasonable way to manage an
- 1543 associated conflict of interest.

1544 **D. Employee responsibilities**

- 1545 1) Employees shall not engage in the prohibited activities listed above unless sanctioned in
- 1546 advance or in any other activity that has been prohibited following a completed review of
- 1547 an employee's conflict of interest disclosure.
- 1548 2) Employees shall disclose a real or perceived conflict of interest as described above:
- 1549 a) As soon as the employee knows of the conflict, and then annually thereafter for as
- 1550 long as the conflict continues to exist;
- 1551 b) In writing on the approved Conflict of Interest Disclosure Form;
- 1552 c) To the appropriate MUSC or MUHA Office of Compliance;
- 1553 3) Employees shall avoid any involvement with all related University or Authority activities
- 1554 and decisions until such time as the conflict of interest has been evaluated and the
- 1555 disclosed activity been approved.
- 1556 4) If there is any question whatsoever about an activity representing a conflict of interest,
- 1557 then the employee should consult with an MUSC or MUHA Office of Compliance or an
- 1558 MUSC or MUHA Office of Legal Counsel for direction.

1559 **E. MUSC/MUHA responsibilities**

- 1560 1. Supervisors shall ensure that all new employees are informed of this policy.
- 1561 2. Supervisors and administrators of MUSC and MUHA shall ensure that all current
- 1562 employees are reminded of this policy on a periodic basis.

- 1563 3. The University and Authority shall develop a peer process to evaluate conflict of interest
- 1564 disclosures, and to review the conduct of approved Management Plans.
- 1565 4. In the event that a reported conflict of interest is approved, the corresponding Office of
- 1566 Compliance shall ensure there is an appropriate Management Plan in place to monitor
- 1567 and manage the situation so that resources are used in an appropriate manner and that
- 1568 there is no improper influence on University or Authority decisions.
- 1569 5. The Offices of Compliance shall ensure that Conflicts of Interest Disclosure forms are
- 1570 retained for future reference. Upon an employee's transfer from the unit or termination
- 1571 from the University or Authority, associated Conflict of Interest Forms shall be retained
- 1572 by the Offices of Compliance for a minimum of three years.
- 1573 6. Supervisors shall establish and maintain a work environment that encourages employees
- 1574 to ask questions about real or potential conflicts of interest.
- 1575 7. If supervisors have any question whatsoever about an external activity representing a
- 1576 conflict of interest, they should consult with an Office of Compliance or an Office of
- 1577 Legal Counsel.

1578 **F. Sanctions for violation**

- 1579 1) Violations of University or Authority policies, including the failure to avoid a prohibited
- 1580 activity or disclose a conflict of interest in a timely manner, will be dealt with in
- 1581 accordance with applicable policies and procedures that may include disciplinary actions
- 1582 up to and including termination of employment.
- 1583 2) The Board of Trustees, as the ultimate governing body, or its designee retains authority to
- 1584 make a final determination of any matter covered by this Policy.

1585 **G. South Carolina state law**

- 1586 1. The South Carolina Ethics Government Accountability and Campaign Reform Act
- 1587 (herein the "Ethics Law") S.C. Code § 8-13-100, among other things, makes it unlawful
- 1588 for a public official, public member or public employee to knowingly use his official
- 1589 office, membership or employment to obtain economic interest for himself, a member of
- 1590 his immediate family, an individual with whom he is associated* or a business with
- 1591 whom he is associated**. This policy is implemented in addition to any requirements of
- 1592 the Ethics Law. Certain persons associated with the Authority or University are required
- 1593 to make filings with the South Carolina Ethics Commission and completion of the form
- 1594 attached to this policy will not satisfy that requirement.

1595 * Defined in the Act as: "Individual with whom he is associated" means an individual
 1596 with whom the person or a member of his immediate family mutually has an interest
 1597 in any business of which the person or a member of his immediate family is a
 1598 director, officer, owner, employee, compensated agent, or holder of stock worth one
 1599 hundred thousand dollars or more at fair market value and which constitutes five
 1600 percent or more of the total outstanding stock of any class.

1601 ** Defined in the Act as: "Business with which he is associated" means a business of
 1602 which the person or a member of his immediate family is a director, an officer,

1603 owner, employee, a compensated agent, or holder of stock worth one hundred
 1604 thousand dollars or more at fair market value and which constitutes five percent or
 1605 more of the total outstanding stock of any class.

1606 **Office responsible for this policy:**

1607 <https://web.musc.edu/about/coi>

1608

1609 **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	

1610 <https://web.musc.edu/about/coi/coi-committees>

1611 For additional information related to research conflict of interest, please refer to the Conflict
 1612 of Interest website: <https://web.musc.edu/about/coi/coi-committees>

1613 The Charter of the MUSC Administrative and Clinical Conflict of Interest Committee can be
 1614 found at: <https://web.musc.edu/about/coi/coi-committees>

1615 **7.06 University Compliance**

1616 The faculty is subject to the University Compliance Plan, the most current version of which
 1617 is included at: <https://web.musc.edu/about/compliance>

1618 **University and Authority Compliance Offices:**

1619 <https://web.musc.edu/about/compliance>

1620 **Research Data Ownership & Record Retention Policy (including guidelines for
 1621 sequestration of documents) (RDO&RR)**

1622 <https://research.musc.edu/resources/ori/irb/policies>

1623

1624 **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

			Nov 2014		
Nov 2017	Mar 2018	Mar 2018	Apr 2018	May 2018	

1625 This policy establishes guidelines for University-Industry relationships to ensure that
 1626 individuals who work for MUSC interact with Industry knowing the rules of the University
 1627 and State that govern such interactions.

1628 I. Policy Statement

1629 MUSC recognizes the value of its relationships with the healthcare industry (“Industry”). The
 1630 University also believes that such relationships must be entered into on the basis of a
 1631 partnership that advances the benefits of biomedical research, education and clinical care in
 1632 pursuit of improving human health. Importantly, these activities must avoid either the
 1633 existence or impression of professional impropriety by University or MUSC individuals who
 1634 are entrusted with the integrity of the institution’s educational, clinical or research programs.

1635 II. Scope

1636 This policy applies to all Trustees, Officers, Faculty, Administrators, Staff, Students and
 1637 Trainees including all full-time, part-time, temporary and contract employees of the Medical
 1638 University of South Carolina. The Medical University Hospital Authority and affiliates of the
 1639 University (including but not limited to University Medical Associates of the Medical
 1640 University of South Carolina, the MUSC Foundation and the Foundation for Research
 1641 Development), which derive their not for profit status from MUSC, shall as a condition of
 1642 conducting business with MUSC, develop and implement policies and procedures
 1643 substantially similar to and consistent with this policy.

1644 III. Approval Authority

1645 Board of Trustees

1646 IV. Purpose of this policy

1647 The purpose of this policy is to establish straightforward, effective and principled guidelines
 1648 for University-Industry relationships to ensure that individuals who work for MUSC interact
 1649 with Industry knowing the rules of the University and State that govern such interactions.
 1650 This is critical to protect the interests of the individual, the University and our patients as we
 1651 undertake these activities to achieve our ultimate goals of promoting scientific research,
 1652 evidence based clinical care, and educating trainees. The University recognizes the
 1653 importance of mutually beneficial relationships with Industry as long as those relationships
 1654 do not compromise the integrity of our missions. Rather, one of the overarching aims of the
 1655 policy is for full disclosure of consulting and educational activities by MUSC personnel to
 1656 help ensure that these activities meet the guidelines set forth in this policy.

1657 V. Who should be knowledgeable about this policy

1658 All MUSC enterprise employees, students, and trainees

1659 VI. The Policy

1660 1. Consulting and Educational Programming:

1661 **a). Consulting**

1662 Purpose: Consulting interactions can facilitate the advancement of innovative ideas and
 1663 discoveries, both of which ultimately benefit the general public through the transfer of
 1664 scientific discovery. This section of the policy clarifies the terms of interactions with
 1665 Industry where the primary goal is scientific exchange.

1666 Policy Statement: Consulting refers to all activities where the external entity furnishes a
 1667 Personal Financial Benefit or an Economic Benefit and/or other Personal Benefit as
 1668 reimbursement/compensation for the exchange of clinical, educational, professional and/or
 1669 scientific information or activities by Covered Persons (see also above). The provision of
 1670 bona fide Consulting Services by Covered Persons to external entities is consistent with
 1671 MUSC's mission when those activities:

- 1672 (a) involve a two-way exchange of ideas in which each party benefits from the
- 1673 interchange;
- 1674 (b) are relevant to and enrich the consultant's research, education or other professional
- 1675 responsibilities;
- 1676 (c) do not interfere with the consultant's responsibilities to patients or the institution;
- 1677 (d) do not adversely affect the consultant's intellectual independence or the integrity of the
- 1678 institution;
- 1679 (e) are confined to the exchange of clinical, educational, professional and/or scientific
- 1680 information.

1681 i. Approved consulting activities include but are not limited to the following:

- 1682 • Serving on advisory boards, expert panels, leadership groups, data safety monitoring
- 1683 boards, and/or similar groups.
- 1684 • Providing expert witness testimony. (See MUSC Faculty Handbook.)
- 1685 • Providing scientific or medical presentations or expertise to industry scientists,
- 1686 research and development staff, and/or their staff.
- 1687 • Providing product review, product evaluation, and product feedback for Industry.

1688 • Demonstrating an Industry product (i.e., teaching when and how to appropriately use
 1689 a product) for medical or research professionals in the context of medical or scientific
 1690 education.

1691 • Providing consultation to venture capital firms, and serving as a scientific or medical
 1692 advisor to Industry for purposes of MUSC intellectual property development.

1693 ii. Prohibited consulting activities include but are not limited to the following:

1694 • Consulting activities requiring or appearing to require MUSC staff to endorse or appear
 1695 to endorse a particular product, drug, device, or service (either orally or in writing).
 1696 This includes demonstrating an Industry product for promotional or sales purposes; and
 1697 appearing (or being quoted) in a video, television, radio, internet broadcast, web site, or
 1698 in other publicly-broadcasted or distributed materials for promotional or sales purposes
 1699 without proper authority or approval.

1700 • Participating in ghostwriting, which is defined as Industry sponsorship for (i) making a
 1701 major contribution towards the writing and/or research of scientific and medical
 1702 publications without receiving authorship; or (ii) accepting authorship for a scientific or
 1703 medical publication without making a major contribution towards the writing and/or the
 1704 research.

1705 • Serving as an Industry sponsored “named reference” for a product recommendation.

1706 • Providing MUSC slides, videos, pamphlets or any other MUSC logo or copyrighted
 1707 materials to Industry for marketing or promotional use. Such use must be approved in
 1708 accordance with MUSC/MUHA policy or procedure.

1709 • Providing services that conflict or appear to conflict with SEC rules and regulations for
 1710 stock brokers, investment houses, equity management companies, banks, and/or
 1711 financial institutions.

1712 • Providing services to an Industry that is in a known legal dispute with MUSC.

1713 • Speaking to investors on behalf of a company, except when the company is an MUSC
 1714 sanctioned and supported faculty start-up company.

1715 The lists of approved and prohibited consulting activities are the same whether consulting is
 1716 done on personal or professional time. All Covered Persons who participate in consulting
 1717 activities are subject to the approval procedures outlined in section VI.1.g of this policy.

1718 **b). Educational Programming**

1719 **Purpose:** MUSC recognizes the value to the institution and Covered Persons in having such
 1720 opinion leaders present educational material before professional and lay groups. As noted in
 1721 the MUSC Faculty Handbook, activities such as presentations to professional groups such as

1722 other universities, health systems, and professional societies are considered to be within the
 1723 scope of Covered Persons' work. Education provided by Covered Persons shall be in the
 1724 best interest of the public, independent from commercial interest, and refrain from product
 1725 promotion. Additionally, MUSC recognizes the benefits that Covered Persons obtain by
 1726 attending educational programs.

1727 **Policy Statement:** This policy applies to all medical, healthcare and scientific speaking
 1728 engagements or educational presentations, with or without professional continuing
 1729 education credit, where Industry furnishes a Personal Financial Benefit or an Economic
 1730 Benefit and/or other Personal Benefit as reimbursement/compensation for the provision of
 1731 those presentations by Covered Persons. The policy also applies to Covered Persons who
 1732 attend such educational meetings. Educational programming should be independent from
 1733 commercial interest and promote evidence-based clinical care and/or advance scientific
 1734 research. MUSC recognizes that bona fide educational activities typically adhere to
 1735 ACCME, ADA CERP, ACPE, ANCC or other national accreditation standards and qualify
 1736 for continuing education credit. Other acceptable activities that do not provide CE credits
 1737 but would serve recognized educational purposes include presentations to industry (e.g.,
 1738 providing scientific or medical expertise) and training for medical or research professionals
 1739 (e.g., teaching practitioners when and how to appropriately use a medical device).
 1740 Otherwise, non-accredited, industry sponsored speaking to healthcare providers is not
 1741 consistent with the standards of allowable educational programming due to the risk of
 1742 industry influence.

1743 i. Approved educational speaker activities include but are not limited to the following:

1744 Providing continuing education (CE) services, scientific or medical presentations or
 1745 expertise at academic meetings and professional societies, at other universities or
 1746 research institutions, and at lay organization meetings as long as the following conditions
 1747 are met:

1748 • These activities are designed to promote evidence-based clinical care and/or advance
 1749 scientific research; • The presentation is made in accordance with professional
 1750 accreditation standards such as the ACCME's Standards for Commercial Support, 1 the
 1751 ADA CERP Continuing Education Recognition Program, or other national
 1752 accreditation standards including those set by the ACPE and the ANCC, i.e., the
 1753 educational content, including handouts and visual-aids, must be determined entirely by
 1754 the speaker; and

1755 • The financial support of industry, if provided, is clearly disclosed. Payments to Covered
 1756 Persons for speaking and for travel costs for these approved educational activities are
 1757 permitted for approved speaker activities (see section VI.1.c for rules about payments).

1758 ii. Prohibited educational speaker activities include but are not limited to the following:

1759 • Speaking at any educational meeting where the content of the presentation, including
 1760 handouts and visual-aids, is not determined entirely by the Covered Person.

1761 • Educational speaking should be independent from commercial interest, and refrain
 1762 from product promotion. As such, speaking activities frequently referred to as speakers'
 1763 bureaus are prohibited. Speakers' bureaus are typically characterized by, but are not
 1764 limited to, the following attributes:

1765 1. Promotional educational activity concerning a biomedical or pharmaceutical product;

1766 2. The company has the contractual right to dictate or control the content of the
 1767 presentation or talk;

1768 3. The company creates the slides or presentation material and/or restricts or otherwise
 1769 limits the Covered Person's intellectual independence over the educational content of his
 1770 or her presentation; and/or

1771 4. Covered Persons are expected to act as a company's agent or spokesperson for the
 1772 purpose of disseminating company or product information (e.g., the presentation is
 1773 focused on a healthcare product made by the sponsor and does not include a balanced
 1774 representation of alternative products or services).

1775 If you have questions about whether a speaking activity is a speakers' bureau, you
 1776 should consult with the COI Office for guidance.

1777 • Providing industry sponsored continuing education (CE) services or scientific or
 1778 medical training to an audience consisting only of MUSC attendees.

1779 iii. Attendance at educational meetings sponsored by Industry

1780 Covered Persons may attend any educational meeting sponsored by industry but may not
 1781 undertake the following:

1782 • Receive gifts, other compensation, or travel costs for attendance;

1783 • Participate in industry sponsored food, beverages or entertainment events if the
 1784 audience is restricted to MUSC personnel only (i.e., MUSC personnel can only accept
 1785 industry sponsored meals, beverages and entertainment events if the audience is not
 1786 restricted to MUSC personnel and is open to members of the professional community at
 1787 large).

1788 The lists of approved and prohibited educational activities are the same whether these
 1789 activities are done on personal or professional time. All Covered Persons who participate
 1790 as speakers in Educational Programs are subject to the approval procedures outlined in
 1791 section 4g of this policy.

1792 **c). Payments for Consulting and Educational Programming**

1793 Payments for consulting and educational services should be at a level commensurate with
 1794 effort. If done on professional time, the distribution of payment to either the individual or
 1795 the institution will be at the discretion of each college or department. For all outside
 1796 activities, Covered Persons should coordinate with the Conflict of Interest Office to
 1797 determine reporting requirements for any industry relationship.

1798 Senior institutional officials (defined here as the President, Vice Presidents, Deans and
 1799 Associate Deans) who conduct outside activities that fall within the institution's missions
 1800 and/or relate to their service as institutional leaders must conduct those activities under a
 1801 written agreement with the institution. Remuneration for the outside activity must be paid
 1802 to the institution and cover the senior official's time and effort for the work;
 1803 compensation should not be in addition to the senior official's institutional salary.

1804 **d). Leave Status Requirements for Consulting and Educational Programming**
 1805 **Activities**

1806 Consulting and Educational Programming activities may occur on either Personal Leave
 1807 (time) or Professional Leave. Please refer to section XI of this policy for specific
 1808 definitions.

1809 **Consulting or Educational Programming Conducted on Personal Leave**

1810 • MUSC resources (e.g., secretarial assistance, office space, etc.) are not allowed to be
 1811 used while providing consulting services or educational programming activities
 1812 performed on personal time.

1813 • Covered Persons considering to undertake consulting or educational programming
 1814 activities with a company with whom they are performing concurrent research should
 1815 consult with the Conflict of Interest Office.

1816 • Covered Persons who consult or conduct educational programming while on Personal
 1817 Leave may retain 100 percent of the fee; this fee must be paid directly to the Covered
 1818 Person from the external entity. The Covered Person is responsible for securing payment
 1819 for these consulting or educational activities, tax liability, and any financial concerns
 1820 associated with such payments.

1821 • MUSC does not provide liability insurance coverage for Covered Persons performing
 1822 consulting OR educational programming activities on personal leave.

1823 • Covered Persons may provide consulting or educational services on Personal Leave in
 1824 conjunction with MUSC approved travel. Additional travel expenses incurred by the
 1825 consulting or educational activities (e.g., additional hotel night/s, per diem,
 1826 transportation, miscellaneous) will be the responsibility of the Covered Person.

1827 • Covered Persons should be aware that payments received from medical device,
 1828 pharmaceutical manufacturers and biomedical suppliers are subject to the Physician

1829 Payment Sunshine Act and will be made publicly accessible via a Centers for Medicare
1830 and Medicaid Services website.

1831 **Consulting or Educational Programming Conducted on Professional Leave**

1832 • MUSC resources may be utilized to conduct consulting or educational programming on
1833 professional leave.

1834 • Covered Persons considering to undertake consulting or educational programming
1835 activities with a company with whom they are performing concurrent research should
1836 consult with the Conflict of Interest Office.

1837 • If the consulting or educational programming is completed on MUSC time while on
1838 professional leave, payment must be made to MUSC and allocated to an account within
1839 the college, department or division. Each college, department or division will be
1840 responsible for the disbursement of funds.

1841 • Consulting or educational programming conducted on professional leave requires a
1842 contract or agreement; please see section VI.1.f of this policy.

1843 • MUSC provides liability insurance coverage for Covered Persons performing
1844 consulting activities or educational programming on professional leave.

1845 **e) Consulting or Educational Programming Conducted with Concurrent Research**

1846 For consulting or educational activities that occur with concurrent research with the
1847 same company, Covered Persons should consult with the Conflict of Interest Office.

1848 **f) Consulting or Educational Programming Contracts**

1849 **Professional Leave Status:**

1850 All formal consulting and educational programming relationships approved for Covered
1851 Persons that are conducted while on Professional Leave must be formalized in a fully
1852 executed contract. All such agreements must be channeled through the appropriate contract
1853 approval process.

1854 • All agreements must clearly describe the services and deliverables to be furnished by
1855 the consultant or speaker, including the time required for such services or method of
1856 calculating compensation, a description of the compensation due under the agreement, a
1857 declaration regarding disposition of intellectual property rights if applicable, and a
1858 provision to protect the use of the MUSC name if appropriate. The agreement should be
1859 consistent with MUSC policies and eliminate unauthorized transfer of MUSC intellectual
1860 property.

1861 • An agreement must be signed and dated by all parties prior to the commencement of
 1862 any of the consulting or educational programming activities. All agreements must be
 1863 consistent with MUSC’s policies, mission and duties to its stakeholders.

1864 • The consultant or speaker is expected to maintain records of the consulting or
 1865 educational programming activities for 6 years after the termination of the contract.

1866 **Personal Leave Status:**

1867 Covered Persons who consult or provide educational programming on Personal Leave are
 1868 acting as independent contractors. Covered Persons may not bind or obligate MUSC in any
 1869 way. Contracts entered into by Covered Persons acting as independent contractors should
 1870 not contain any references to MUSC or its Affiliates; this includes an individual title (i.e.,
 1871 Professor, Director etc.) or work addresses.

1872 **g) Approval Process for Consulting and Educational Programming**

1873 All consulting and educational programming whether occurring on Personal Leave or
 1874 Professional Leave must not impact negatively on MUSC or MUSC’s research,
 1875 educational or clinical missions. For all outside activities, Covered Persons should
 1876 coordinate with the Conflict Of Interest Office to determine reporting requirements for
 1877 any industry relationship. Requests for consulting and educational programming
 1878 occurring on Professional Leave must be approved by the department chair or appropriate
 1879 supervisor during the university’s contract approval process. It is recommended that
 1880 Covered Persons notify their department chair or supervisor of any consulting or
 1881 educational programming occurring on Personal Leave, as individual departments and/or
 1882 colleges may have additional requirements.

1883 **2. Gifts**

1884 Covered Persons and their immediate family members may not accept gifts of value
 1885 exceeding \$10 from vendors or other representatives of industry. Examples of gifts include,
 1886 but are not necessarily limited to, travel and lodging expenses; membership dues; admission
 1887 fees; preferential terms on a loan, goods or services; or the use of real property; for this
 1888 section, “gifts” does not include food and beverages which is a subject handled in Section 6
 1889 below.

1890 Acceptance of travel funds to participate in meetings or training directly related to ongoing
 1891 sponsored research is not considered a gift and is allowable.

1892 Covered Persons may accept travel funds from scientific or professional societies that are
 1893 funded by industry, as long as the society controls the selection of the recipient. Covered
 1894 Persons may not accept travel funds directly from industry but travel support from industry
 1895 funds provided to MUSC is allowed.

1896 **3. Food, Beverages and General Hospitality**

- 1897 Except as noted below, Covered Persons should not accept food and beverages, support for
 1898 social events, or other hospitality offered directly by Industry to the Covered Person.
 1899 Industry support for food and beverages for college, department or division meetings or
 1900 retreats is prohibited.
- 1901 Covered Persons attending an educational meeting or conference may participate in food,
 1902 beverages and social receptions sponsored by Industry as long as invitation to these events is
 1903 open to non-MUSC attendees as well, i.e., the event is open to all meeting attendees.
- 1904 A Covered Person engaged in off-site consulting may accept food and beverages as a part of
 1905 a reasonable compensation package for consulting services.
- 1906 Covered Persons cannot participate in industry sponsored food, beverages and/or
 1907 entertainment events that are provided only for a select invited individual or group of
 1908 individuals if the primary purpose of the event is for marketing and promotional purposes.
 1909 However, this restriction does not preclude allowable activities, such as site visits and
 1910 meetings with potential vendors, which may occur when obtaining contracted goods and
 1911 services; these activities are governed by state and MUSC and/or MUHA procurement
 1912 guidelines. Covered Persons should recognize that attendance at an industry supported event
 1913 may cause their name and institutional affiliation to be reported as required by federal
 1914 regulation. This can be avoided by paying for one's own meal at such events, and removing
 1915 one's name from the attendance list.
- 1916 **4. Industry Supported Continuing Education Programs**
- 1917 • Continuing Education (CE) programs supported by Industry are permitted provided the
 1918 following criteria are met:
- 1919 ○ Industry sponsored programs offering continuing education (CE) credit must be
 1920 processed through the Office of Continuing Medical Education if appropriate and adhere to
 1921 the standards for commercial support established by the ACCME, the ADA CERP, the
 1922 ACPE, the ANCC, or other such accrediting or licensing body if available.
- 1923 ○ Industry provided food and beverages are prohibited at educational programs in which
 1924 the only attendees are from MUSC, both on campus and off campus.
- 1925 ○ Students or trainees may participate in the continuing education programs as long as the
 1926 programs are structured group settings that are supervised by faculty.
- 1927 ○ Appropriate disclosure statements are made in any pre-meeting announcement and by the
 1928 speaker prior to beginning the program.
- 1929 ○ Companies seeking to provide support for CE programs may do so through unrestricted
 1930 educational grants.
- 1931 **5. Educational Materials and Equipment**
- 1932 Donations of educational materials and equipment may be accepted. Such donations are
 1933 expected to be used by faculty, staff, students and trainees and are not expected to be used
 1934 by a single Covered Person. Donations are expected to be donated directly to an appropriate

1935 college or departmental official within the University or a University affiliate, and
 1936 documentation of the donation, including the value of the equipment donated and the date of
 1937 the donation, should be retained. Donations of capital equipment require approval of the
 1938 Executive Vice President for Academic Affairs and Provost, except in cases of sponsored
 1939 research, in which equipment donations are managed by the Office of Research and
 1940 Sponsored Programs.

1941 6. Scholarships and other Educational Funding for Students and Residents

1942 Industry support for student scholarships, residents and fellows should be made in
 1943 cooperation with the appropriate MUSC entity or University official. This may include the
 1944 MUSC Foundation or the MUSC Foundation for Research Development, the Development
 1945 Office, the Office of Research and Sponsored Programs or senior leadership according to
 1946 the Institution's policies and procedures. Covered Persons must obtain approval from the
 1947 department chair, division director or college dean before soliciting Industry for these
 1948 purposes. The appropriate MUSC entity or University Official must manage and oversee the
 1949 receipt of such Industry support. The evaluation and selection of recipients of such funds
 1950 and use of such funds must be at the sole discretion of the University, college, or
 1951 department. All potential industry sponsors should be given the opportunity to contribute.

1952 7. Fundraising and Business Development Activities

1953 The Institution recognizes that the MUSC Foundation has a unique and integral mission to
 1954 attract financial support that furthers the research, education and patient care initiatives of
 1955 the MUSC enterprise. Similarly, the Institution recognizes that certain activities are
 1956 necessary to further the strategic and business development initiatives of the institution.
 1957 Activities necessary to the successful conduct of fundraising and strategic advancement on
 1958 behalf of the Institution may continue. However, these activities are not permitted to
 1959 influence educational, clinical or research operations of the Institution other than providing
 1960 support to further those missions. Activities intended to further strategic and business
 1961 development initiatives must be part of the Covered Person's official duties or approved in
 1962 advance by a member of the President's Group

1963 No gift shall influence or appear to influence Institutional decision-making related to
 1964 procurement, patient care, education and research integrity. Any concerns shall be reported
 1965 immediately to the Conflict of Interest Office. Notwithstanding anything in this section, SC
 1966 state employees remain subject to the SC Ethics Law and must act in compliance with state
 1967 regulations.

1968 8. Charitable Contributions

1969 Charitable contributions from industry for the benefit of the University or any of its
 1970 affiliates must be made through the appropriate University channels. This may include the
 1971 Development Office, MUSC Foundation or University leadership. The distribution of
 1972 charitable contributions for their intended purposes will be the responsibility of the
 1973 department, division director, college deans, and administration. Industry funding for

1974 sponsored projects (funding provided which is subject to terms and conditions) is accepted
 1975 and managed on behalf of MUSC by the Office of Research and Sponsored Programs
 1976 (ORSP).

1977 9. Pharmaceutical Samples

1978 Drug samples that are provided for distribution to patients will be handled in accordance
 1979 with MUHA Policy C-26, Medication Samples.

1980 10. Site Access

1981 The MUSC Medical Center recognizes the value of information provided by various
 1982 industry representatives but intends to limit access to its personnel and facilities to prevent
 1983 interference with patient care activities. All vendors are expected to adhere to policy A-15,
 1984 Account/Vendor Representatives <https://www.musc.edu/medcenter/policy/Med/A015.pdf> or
 1985 any applicable contract with the vendor.

1986 11. Use of Confidential Information

1987 Unauthorized use of confidential, privileged or proprietary information by Covered Persons
 1988 or their family members is prohibited. This includes but is not limited to, disclosure of such
 1989 information to commercial entities without authorization; unauthorized use of such
 1990 information to engage in a relationship with a commercial entity that leads to a Personal
 1991 Financial Benefit or Economic Benefit for the Covered Person or their family member.

1992 12. Purchasing

1993 Covered Persons with any financial interest in any particular manufacturer of
 1994 pharmaceuticals, devices or equipment or any provider of goods or services, must disclose
 1995 such interests and recuse themselves from purchasing decisions relevant to the conflicting
 1996 interests. Any Covered Person whose expertise is necessary to evaluate any product must
 1997 disclose his/her financial ties to any manufacturer of that or any related product to those
 1998 charged with the responsibility of making the purchasing decision.

1999 13. Disclosure and Notification

2000 Covered Persons shall disclose all relationships with commercial entities as described in the
 2001 MUSC/MUHA Board of Trustees Conflict of Interest Policy. This policy can be found at
 2002 www.musc.edu/coi.

2003 If there is a question about appropriate interaction with a commercial entity or the potential
 2004 for a Conflict of Interest, the Covered Person should consult with individuals within their
 2005 chain of command, the MUSC Conflict of Interest Office, MUSC, MUHA or UMA Office
 2006 of Compliance, or the MUSC General Counsel's Office for guidance.

2007 VII. Special Situations

2008 Exceptions

2009 The University Conflict of Interest Committee will review/consider requests for exceptions
2010 to this policy. Request for exceptions must be submitted in writing to the Conflict of Interest
2011 Office. Resolution of such requests will be documented in the minutes of the University
2012 Conflict of Interest Committee and reported back to the requestor and their supervisor. If
2013 additional recourse is desired after review and action by the University Conflict of Interest
2014 Committee, a Covered Person may submit their request in writing to the MUSC Executive
2015 Vice President for Academic Affairs and Provost for appeal.

2016 VII. Sanctions for Non- compliance

2017 Violations of this Policy, including the failure to avoid a prohibited activity or disclose
2018 relationships with commercial entities will be dealt with in accordance with applicable
2019 policies and procedures that may include disciplinary action up to and including termination
2020 of employment or medical staff privileges. Sanctions may include suspension or dismissal,
2021 nonrenewal of appointment, denial of eligibility to engage in research funded through
2022 MUSC, denial of merit pay, or other appropriate penalties. Such sanctions may require
2023 giving notice of relevant information to funding agencies, professional bodies or journals, or
2024 the public. Termination of medical staff privileges or denial of medical staff privileges
2025 under this policy will not be based upon a physician’s individual competence, quality of
2026 care, or professional conduct. Therefore, the revocation or denial of appointment or
2027 reappointment will not be reportable to any agency or databank.

2028 The Executive Vice President for Academic Affairs and Provost will determine the methods of
2029 resolving non-compliance with this policy and applying sanctions. The Executive Vice
2030 President for Academic Affairs and Provost may refer the matter to the appropriate College
2031 Dean or in the case of affiliates, to the senior administrative officer of that affiliate, take
2032 action on his or her own, or initiate MUSC procedures governing such discipline. The Board
2033 of Trustees, as the ultimate governing body, or its designee, retains authority to make a final
2034 determination of any matter covered by this policy.

2035 IX. Related Information

2036 A References, citations

- 2037 • Korn D. Carlat D. Conflicts of interest in medical education: Recommendations
2038 from the Pew Task Force on medical conflicts of interest. Journal of the American
2039 Medical Association. 310(22):2397-2398, 2013.
- 2040 • Boumil MM. Cutrell ES. Lowney KE. Berman HA. Pharmaceutical speakers'
2041 bureaus, academic freedom, and the management of promotional speaking at
2042 academic medical centers. Journal of Law, Medicine & Ethics. 40(2):311-25, 2012.

2043 For further information regarding conflicts of interest in medicine and academics related to
2044 Industry relationships, visit the Industry Relations webpage on the Conflict of Interest
2045 website (<https://web.musc.edu/about/coi/coi-policies>).

2046

2047 X. Communication Plan

2048 Review of this policy is covered in the annual mandatory training for all employees.

2049

2050 XI. Definitions:

2051 For purposes of this policy:

2052 **Industry** refers to any corporation, partnership, sole proprietorship, firm, franchise,
 2053 association, organization, holding company, joint stock company, receivership, trust,
 2054 enterprise, or other legal entity, including for profit and not for profit entities that are
 2055 engaged in 1) the manufacture, distribution or sale of diagnostic or therapeutic drugs,
 2056 medical/dental devices or equipment, supplies, or information technology, 2) medical
 2057 testing, or 3) providing services for clinical care, research, or education. Industry also refers
 2058 to entities that provide services to MUSC in the areas of physical plant, university and
 2059 hospital administration, human resources, project management, clinical services and
 2060 regulatory services. The term industry does not include professional associations and
 2061 societies, not for profit foundations, law offices, not for profit volunteer health
 2062 organizations, academic institutions or not for profit hospitals that provide medical
 2063 research/education-related products and services.

2064 **Conflict of Interest** is defined as the circumstance that arises when an individual has an
 2065 opportunity to influence patient care, research and education of trainees regarding the
 2066 purchase or use of products or services of an industry with which he/she has a secondary
 2067 interest (financial relationship, or research support, or personal benefit).

2068 **Consulting** (Consulting Services, Consultant, etc.) is defined as all activities where the
 2069 external entity furnishes a Personal Financial Benefit or Economic Benefit and/or other
 2070 Personal Benefit such as reimbursement/compensation for the exchange of clinical,
 2071 educational, professional and/or scientific information or activities by Covered Persons.

2072 **Educational Programming** is defined as medical, healthcare and scientific speaking
 2073 engagements or educational presentations where Industry furnishes a Personal Financial
 2074 Benefit or Economic Benefit and/or other Personal Benefit as reimbursement/compensation
 2075 for the provision of those presentations by Covered Persons.

2076 **Personal Financial Benefit or Economic Benefit** is defined as anything of monetary value
 2077 - including salary, commissions, fees, honoraria, gifts, equity interests (which include any
 2078 stock, stock option, or other ownership interest), interests in real or personal property,
 2079 dividends, royalty, rent, capital gains, intellectual property rights, loans, and forgiveness of
 2080 debt. The term "personal" also includes the Covered Person's immediate family, including
 2081 parents, spouse, siblings, children, stepchildren and grandchildren.

2082 **Other Personal Benefit** is defined as a non-financial benefit to a Covered Person; for
 2083 example, promise of a job promotion, future grant, research publication, clinical trial or
 2084 authorship, etc. The term “personal” includes the Covered Person’s immediate family,
 2085 defined as parents, spouse, siblings, children, stepchildren and grandchildren.

2086 **Personal Leave** is defined as that time away from work taken as annual leave , or any part
 2087 of a 24-hour period when there are no MUSC assigned responsibilities (e.g., weekends or
 2088 after hours when there are no MUSC assigned responsibilities).

2089 **Professional Leave** includes time away from MUSC to conduct MUSC approved
 2090 professional activities, while receiving compensation from MUSC. A request for this leave
 2091 must be approved by the Covered Person’s supervisor.

2092 XII. Review cycle

2093 At least every five years

2094 The link to this policy can be found at:
 2095 <http://academicdepartments.musc.edu/coi/coipolicies/coipolicies.htm>

2096 **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	

2097 I. Policy Statement

2098 In order for MUSC to engage in entrepreneurial and economic development activities, parameters are
 2099 required to ensure public trust and integrity in the course of the activities, and to create an
 2100 environment that fosters transparent, principled activities.

2102 II. Scope

2103 This policy applies to all Officers, Faculty, Students, Administrators, and Staff, including all full-time,
 2104 parttime, temporary, and contract Employees of the Medical University of South Carolina (MUSC) and
 2105 the Medical University Hospital Authority (“MUHA”) (collectively, “MUSC”), as well as third party
 2106 consultants, contractors, vendors and any individual or entity that is provided access to MUSC’s
 2107 information resources. Affiliates (entities which derive their not for profit status from MUSC, including
 2108 but not limited to MUSC Physicians, MUSC Physicians Primary Care, the MUSC Foundation, and the
 2109 MUSC Foundation for Research Development (“FRD”)) shall as a condition of continued business with
 2110 MUSC and MUHA develop and implement policies and procedures substantially similar to and consistent
 2111 with this Policy.

2113 III. Approval Authority

2114 Dean's Council, Faculty Senate

2115

2116 IV. Purpose of This Policy

2117 MUSC recognizes that the commercialization of discoveries can have significant benefits for society and
 2118 is an important component of the mission of the academic community, as well as the strategic economic
 2119 goals of MUSC and the State of South Carolina. Research from our nation's universities is a major source
 2120 of discoveries and intellectual property that are essential for the country's continuing economic
 2121 development. Relationships between academic and commercial entities have been encouraged and
 2122 promoted through laws such as the Federal Bayh-Dole Act and the Life Sciences Act of South Carolina.
 2123 Innovation and the technology commercialization resulting therefrom, is a pillar of Imagine 2020, the
 2124 MUSC Strategic Plan, and is consistent with the Smart State Program in South Carolina.

2125

2126 Moreover, entrepreneurial entities which involve MUSC employees may bring significant benefit to the
 2127 economic growth of MUSC and South Carolina. The association of faculty with outside entities may also
 2128 have beneficial effects on their teaching and research activities, provide opportunities for research
 2129 funding, and advance both MUSC's and the faculty member's reputation in the scientific community.
 2130 Consequently, MUSC desires to support and facilitate these interactions.

2131

2132 These activities, however, must be undertaken in accordance with The South Carolina Ethics,
 2133 Government Accountability, and Campaign Reform Act (the "State Ethics Act"), SC Code Ann. § 8-13-
 2134 10, et seq., and MUSC's policies, including but not limited to the Conflict of Interest Policy, Industry
 2135 Relations Policy, and Intellectual Property Policy.

2136

2137 V. Who Should Be Knowledgeable about This Policy

2138 All MUSC enterprise employees

2139 VI. The Policy

2140

2141 A. Disclosure of Outside Activities

2142 Before engaging in Entrepreneurial Activities (as defined in Section X.B.), Covered Persons (as defined
 2143 in Section X.A.) must document the activities on the Disclosure of Entrepreneurial Activity Form . The
 2144 Disclosure of Entrepreneurial Activity Form is provided by MUSC FRD and attached in the Appendix.
 2145 The Covered Person must circulate the Disclosure of Entrepreneurial Activity Form for approval by the
 2146 Covered Person's Supervisor or Department Chair, College Dean (as applicable), and the Office of the
 2147 Vice President for Research. If the Covered Person is a MUHA employee, the Disclosure of
 2148 Entrepreneurial Activity Form must also be circulated to and approved by the applicable ICCE Chief. A
 2149 record of the disclosure must be provided to MUSC FRD and the MUSC Conflict of Interest (COI) Office
 2150 in addition to any annual conflict of interest disclosure required under the MUSC/MUHA Conflict of
 2151 Interest Policy, as discussed below. In the event of any disagreement, the Vice President for Research will
 2152 provide final resolution.

2153

2154 B. Disclosure to COI Office

2155 The MUSC/MUHA Conflict of Interest Policy is not intended to prohibit approved and
 2156 appropriately managed economic development activities related to MUSC-generated intellectual
 2157 property, including MUSC employee involvement with startup companies, Small Business
 2158 Administration (SBIR/STTR)-funded research and Centers of Economic Excellence Activities. However,
 2159 any such activities by MUSC employees that make use of MUSC property, facilities, equipment, or other
 2160 resources shall be for the sole benefit of the MUSC enterprise as required in the MUSC/MUHA Conflict
 2161 of Interest Policy. All approved effort and financial relationships concerning Entrepreneurial Activities
 2162 must be disclosed in the MUSC disclosure system in accordance with the MUSC/MUHA Conflict of
 2163 Interest Policy. For Covered Persons required to submit annual disclosures, if changes in a relationship

2164 with an approved outside entity occur, the Covered Person is required to update their disclosure form
 2165 within 30 days of the change.

2166
 2167 C. Review of Outside Activities

2168 It is recognized that association of a Covered Person with a company is often necessary for the
 2169 commercialization of intellectual property. However, with the progression of time, such individuals may
 2170 have to formally partition their effort and salary between MUSC and the outside entity. Such segregation
 2171 of effort may be mandated as part of a Conflict of Interest Management Plan directed by the Covered
 2172 Person’s Department Chair, Supervisor, Dean or the Office of the Vice President for Research or its
 2173 designee. Any Covered Person engaged in an Entrepreneurial Activity should have their activities
 2174 reviewed by their Supervisor or Department Chair annually to determine if any adjustments are needed.

2175
 2176 D. Permissible Use of MUSC Resources Associated with Entrepreneurial Activities

2177 MUSC supports economic development within the State of South Carolina, and Entrepreneurial
 2178 Activities of Covered Persons may be considered part of their duties if appropriately approved and
 2179 documented. MUSC resources may be used in support of approved Entrepreneurial Activities provided
 2180 these activities do not conflict with applicable policies, state and federal laws, and regulations regarding
 2181 use of public facilities for private gain.

2182
 2183 Permissible use of MUSC resources for Entrepreneurial Activities is limited to: (1) resources that
 2184 are freely available to the public; or (2) incidental use of such MUSC resources that does not result in
 2185 additional public expense. For example, “incidental use” may include use of material, personnel, or
 2186 equipment when:

- 2187 (a) The use of such MUSC resources does not increase MUSC expense;
- 2188 (b) The use does not interfere with the Covered Person’s obligation to carry out MUSC duties
 2189 in a timely and effective manner;
- 2190 (c) The use in no way undermines the use of resources and services for official purposes;
- 2191 (d) The use does not express or imply sponsorship or endorsement by MUSC; and
- 2192 (e) The use is consistent with MUSC policies, including but not limited to the MUSC

2193 Acceptable Use of Computing and Telecommunications Resources Policy as well as state and federal
 2194 laws regarding obscenity, libel, political activity, the marketing of products or services, or other
 2195 inappropriate activities.

2196
 2197 A proposed use of MUSC resources that advances only the interests of a faculty or staff member,
 2198 or of a non-MUSC entity with which a Covered Person he or she is associated without any concurrent
 2199 benefit to the MUSC, is prohibited under this Policy.

2200
 2201 Covered Persons may make “incidental use” of MUSC resources for Entrepreneurial Activities (as
 2202 described above) if:

- 2203 (a) The activity is an Entrepreneurial Activity as defined in Section X.B;
- 2204 (b) Such Entrepreneurial Activity contributes to the MUSC’s economic development,
 2205 technology transfer, or other public service goals; and
- 2206 (c) The Entrepreneurial Activity is consistent with and similar in nature to activities
 2207 such as:
 - 2208 (i) Early stage activities associated with forming a nonprofit organization focused on
 - 2209 health care, education, research, or public policy issues;
 - 2210 (ii) Activities in support of the development of a licensing agreement with an
 - 2211 established company; or
 - 2212 (iii) Early stage activities associated with forming a company to which MUSC FRD
 - 2213 expects to license intellectual property, whether or not MUSC FRD expects to acquire

2214 equity in the company.

2215

2216 E. Contracted Research

2217 If a company executes a contract with MUSC for support of further research related to
 2218 development of intellectual property, that company (the "Venture") will assume the full cost of research
 2219 personnel and resources associated with this agreement, including Facilities & Administrative (F&A)
 2220 costs derived from the most current and official MUSC F&A rates. Use of state or federal resources must
 2221 comply with all applicable state and federal regulations.

2222

2223 The testing of interventions in human patients as part of a clinical trial requires special attention
 2224 in cases where there are real or perceived conflicts of interest. Any involvement by the Venture and any
 2225 related intellectual property relevant to clinical trials conducted at MUSC must be communicated to the
 2226 appropriate Institutional Review Board (IRB) at the time the original protocol is submitted, and to clinical
 2227 trial participants in the informed consent documents. Similar information must be communicated to any
 2228 collaborators, co-investigators at MUSC and/or multi-site participants for such studies. For clinical trials
 2229 involving a MUSC employee and/or trainee, or their immediate family, MUSC will contract for an
 2230 outside IRB and/or independent clinical monitor(s) to have the research conducted at MUSC with any
 2231 associated expenses paid for by the Venture. If MUSC has an institutional conflict of interest or the
 2232 potential for an institutional conflict of interest in a clinical trial to be conducted at MUSC, an outside
 2233 IRB must be contracted for review.

2234

2235 F. Management of Potential or Real Conflicts of Interest

2236 Relationships between MUSC and outside entities may introduce actual and potential conflicts of
 2237 interest. The MUSC Conflict of Interest (COI) Office shall manage these issues in an equitable manner,
 2238 with the goal of empowering the development process in accordance with federal and state guidelines,
 2239 the MUSC/MUHA Conflict of Interest Policy, and guidelines provided in this policy.

2240

2241 In most cases of conflict, the appropriate COI Committee, along with the Covered Person and
 2242 his/her Supervisor or Department Chair, will devise a COI Management Plan that will attempt to be
 2243 equitable to the individual(s) involved, promote the entrepreneurial goals of MUSC, and protect the
 2244 academic interests of MUSC, including the scholarly pursuit of new knowledge. COI Management Plans
 2245 may require adjustment as circumstances change, and therefore will be reviewed with the individual's
 2246 Supervisor or Departmental Chair, as applicable, at least annually. Conflicts of interest will be disclosed
 2247 to all appropriate constituencies, within the MUSC enterprise in accordance with the MUSC/MUHA
 2248 Conflict of Interest Policy.

2249

2250 G. Intellectual Property

2251 Intellectual property developed by Covered Persons is subject to the MUSC Intellectual Property
 2252 Policy. The MUSC Intellectual Property Policy provides information on the reporting and ownership of
 2253 intellectual property developed jointly by an MUSC employee and an outside entity.

2254

2255 Because MUSC is a state-supported institution, and because most research is federally supported
 2256 and subject to federal regulations, Covered Persons cannot be given a favored position in respect to
 2257 licensing the rights to intellectual property owned by MUSC. Options to technology rights, in lieu of full
 2258 licenses, will be considered during the early stages of the Venture. Each option or license must be
 2259 negotiated with MUSC FRD in open competition with all entities with a bona fide interest in
 2260 commercializing the intellectual property. The fact that the Covered Person or members of their
 2261 Departments are the inventor(s) or creator(s) does not ensure licensing of that intellectual property to
 2262 the entity in which they hold special interest. Terms for all options or licenses must be based on fair value
 2263 and conform to all applicable federal agency rules, regulations and restrictions.

2264
 2265 All research findings related to MUSC intellectual property will be open to publication in scientific
 2266 journals with limited time delays as defined in the relevant licensing agreement.
 2267
 2268 Rights to intellectual property resulting from an outside entity’s use of MUSC space and
 2269 interaction with MUSC personnel will be governed by the MUSC Intellectual Property Policy, and/or the
 2270 licensing agreement between the entity and MUSC FRD.
 2271
 2272 VII. Exceptions
 2273 MUSC FRD will review/consider requests for exceptions to this policy in conjunction with the MUSC
 2274 Conflict of Interest (COI) Office. Request for exceptions must be submitted in writing to MUSC FRD and
 2275 the COI Office. Resolution of such requests will be reported back to the requestor and their Supervisor. If
 2276 additional recourse is desired after review and action by MUSC FRD and the COI Office, a Covered
 2277 Person may submit their request in writing to the MUSC Vice President for Academic Affairs & Provost
 2278 for appeal.
 2279
 2280 VIII. Sanctions for Non-compliance
 2281 Violations of this Policy, including the failure to avoid a prohibited activity or disclose relationships with
 2282 commercial entities, will be dealt with in accordance with applicable policies and procedures that may
 2283 include disciplinary action up to and including termination of employment or medical staff privileges.
 2284 Sanctions may include suspension or dismissal, non-renewal of appointment, denial of eligibility to
 2285 engage in research funded through MUSC, denial of merit pay, or other appropriate penalties. Such
 2286 sanctions may require giving notice of relevant information to funding agencies, professional bodies or
 2287 journals, or the public. Termination of medical staff privileges or denial of medical staff privileges under
 2288 this policy will not be based upon a physician’s individual competence, quality of care, or professional
 2289 conduct. Therefore, the revocation or denial of appointment or reappointment will not be reportable to
 2290 any agency or databank.
 2291
 2292 The Vice President for Academic Affairs and Provost will determine the methods of resolving
 2293 noncompliance with this policy and applying sanctions. The Provost may refer the matter to the
 2294 appropriate College Dean or in the case of Affiliates, to the senior administrative officer of that Affiliate,
 2295 take action on his or her own, or initiate MUSC procedures governing such discipline.
 2296
 2297 The MUSC Board of Trustees, as the ultimate governing body, or its designee, retains authority to make a
 2298 final determination of any matter covered by this policy. The MUSC Board of Trustees, or its designee,
 2299 will make its determinations in accordance with The South Carolina Ethics, Government Accountability,
 2300 and Campaign Reform Act (the “State Ethics Act”), SC Code Ann. § 8-13-10, et seq., and MUSC’s
 2301 policies, including but not limited to the Conflict of Interest Policy, Industry Relations Policy, and
 2302 Intellectual Property Policy.
 2303
 2304 IX. Related Information
 2305 A. References, citations
 2306 1. MUSC/MUHA policies that relate to industry, IP and faculty/employee start-up ventures
 2307 (a) MUSC Intellectual Property Policy: [https://research.musc.edu/resources/frd/forinventors/](https://research.musc.edu/resources/frd/forinventors/policies)
 2308 policies
 2309 (b) Disclosure of Entrepreneurial Activity Faculty start-up ventures forms on MUSC
 2310 FRD website: <https://academicdepartments.musc.edu/frd/>
 2311 (c) MUSC/MUHA Industry Relations Policy and other Conflict of Interest Policies:
 2312 <https://web.musc.edu/about/coi/coi-policies>
 2313 (d) MUSC Acceptable Use of Computing and Telecommunications Resources Policy

2314 [https://horseshoe.musc.edu/~media/files/services-all-files/ociofiles/](https://horseshoe.musc.edu/~media/files/services-all-files/ociofiles/policies/pgc0002-musc-acceptable-use-of-computing-andtelecommunications-resources-policy.pdf?la=en)
 2315 [policies/pgc0002-musc-acceptable-use-of-computing-andtelecommunications-](https://horseshoe.musc.edu/~media/files/services-all-files/ociofiles/policies/pgc0002-musc-acceptable-use-of-computing-andtelecommunications-resources-policy.pdf?la=en)
 2316 [resources-policy.pdf?la=en](https://horseshoe.musc.edu/~media/files/services-all-files/ociofiles/policies/pgc0002-musc-acceptable-use-of-computing-andtelecommunications-resources-policy.pdf?la=en)
 2317
 2318 2. References and Resources
 2319 (a) South Carolina Launch, an SCRA Collaboration: Commercialization Services for
 2320 Entrepreneurial startup companies: <http://sclaunch.org>
 2321 (b) SCBIO association dedicated to growing the life science industry in South Carolina:
 2322 <http://scbio.org>
 2323 (c) SCTR South Carolina Clinical and Translational Research Institute <http://sctr.musc.edu>
 2324 (d) Chair MUSC Research Conflict of Interest Committee: [https://web.musc.edu/about/coi/coi-](https://web.musc.edu/about/coi/coi-committees)
 2325 [committees](https://web.musc.edu/about/coi/coi-committees)
 2326 (e) South Carolina Ethics Commission Rules of Conduct: <http://sc.gov/rulesofconduct>
 2327 (f) University of Wisconsin-Madison: <http://grad.wisc.edu/research/policyrp>
 2328
 2329 3. Related Statutes
 2330 (a) Bayh-Dole Act: 35 U.S.C. § 200-212; 37 C.F.R. 401; 37 C.F.R 404
 2331 (b) SC Life Sciences Act: SC Code Section 12-15-10 et seq.
 2332 <https://www.scstatehouse.gov/code/t12c015.php>
 2333
 2334 B. Other
 2335 Questions regarding this policy can be directed to the Director of the MUSC Conflict of Interest
 2336 (COI) Office, the Chief Innovation Officer, and/or the Executive Director for MUSC FRD.
 2337
 2338 C. Appendices
 2339 A.1 Disclosure of Entrepreneurial Activity Form
 2340
 2341
 2342 X. Definitions
 2343 A. “Covered Person(s)” includes all Officers, Faculty, Administrators, Staff, Students
 2344 (including visiting students) and Trainees including all full-time, part-time, temporary and contract
 2345 employees of the Medical University of South Carolina and the Medical University Hospital Authority,
 2346 affiliates of MUSC (including but not limited to University Medical Associates of the Medical University
 2347 of South Carolina, the MUSC Foundation and MUSC FRD which derive their not for profit status from
 2348 MUSC, shall as a condition of conducting business with MUSC, develop and implement policies and
 2349 procedures substantially similar to and consistent with this policy.
 2350
 2351 B. “Entrepreneurial Activities” include all activities inwhich any Covered Person engages as part
 2352 of that Covered Person’s participation in a startup or other company, which expects to or does
 2353 commercialize intellectual property optioned or licensed from MUSC (FRD). Additionally,
 2354 Entrepreneurial Activities include a Covered Persons’ provision of services to a startup or other company
 2355 based upon the Covered Person’s professional expertise, to the extent such services are provided to a
 2356 startup or other company that expects to or does commercialize intellectual property optioned or
 2357 licensed from MUSC FRD.
 2358
 2359 C. “Venture” includes those arrangements as defined in Section IVI.E. above.
 2360
 2361

2362 **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	

2363 The Medical University of South Carolina neither encourages nor discourages faculty
 2364 participation as witnesses in legal proceedings. All such requests or directives to serve as a
 2365 witness because of professional training or position should be immediately reported to and
 2366 receive the prior approval of the department chair or next higher administrator. Department
 2367 chairs should file an annual report on all such witness activity with their respective deans.

2368 It is expected that time and resources spent as a witness or consultant in legal matters be
 2369 considered patient care-related and that all remuneration as set by the Medical University of
 2370 South Carolina should be reimbursed to the faculty member's practice plan or appropriate
 2371 college account.

2372 **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	

2373 A process sanctioned by the Faculty Senate for the annual review by the faculty for
 2374 performance of chairs, deans, and/or other unit directors has been approved by the Executive
 2375 Vice President for Academic Affairs and Provost. Each May, the Executive Vice President
 2376 for Academic Affairs and Provost's Office sends out questionnaires maintained at the
 2377 following link to all faculty including part-time faculty

2378 [https://education.musc.edu/leadership/provost/reporting-units/institutional-](https://education.musc.edu/leadership/provost/reporting-units/institutional-effectiveness/assessment)
 2379 [effectiveness/assessment](https://education.musc.edu/leadership/provost/reporting-units/institutional-effectiveness/assessment)

2380 Completed forms are sent anonymously to the Office of the Executive Vice President for
 2381 Academic Affairs and Provost or his/her designee where results are collated, tabulated,
 2382 summarized, etc., and given to deans of the respective colleges. The Executive Vice
 2383 President for Academic Affairs and Provost informs the President of the Faculty Senate in
 2384 March that the process has been completed and deans have reviewed the data which is
 2385 archived in the event future reexamination becomes necessary.

2386 **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	

2387 The faculty is subject to the university copyright policies. See Executive Vice President for
 2388 Academic Affairs and Provost Office website:
 2389 <https://web.musc.edu/about/compliance/disclaimer> for the most current versions. Also, see
 2390 “Intellectual Property” in section 7.12.04.

2391 **7.12 Faculty Research Activities**

2392 **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	

2393 The Office of Research and Sponsored Programs assists investigators and/or leaders of other
 2394 sponsored programs in filing timely and complete grant or other support proposals,
 2395 coordinating regulatory reviews, filing progress reports as required, and identifying potential
 2396 sources of funding. It maintains liaison with federal, state, and other major research support
 2397 agencies, assures compliance with MUSC, state, federal, and other agencies' policies and
 2398 procedures, reviews proposals and provides administrative approval.

2399 Faculty members are encouraged to consult the office at any time for information or advice
 2400 on program development, application preparation, and grants and contracts management.
 2401 Those who are ready to make application for funds should contact the Research Office early
 2402 in the process to be sure there is sufficient time to complete the required administrative
 2403 review before the submission deadline.

2404 A directory of Resources for Researchers at the Medical University of South Carolina is
 2405 available on request through the Research Office or the office of the Vice President for
 2406 Research. Directory of Research Support, which includes abstracts of research being
 2407 conducted, is also available on request. In addition, updated research support data on past
 2408 and ongoing grants, cooperative agreements, contracts and other mechanisms of extramural
 2409 funding are available through the office of the Vice President for Research.

2410 The financial management of awards is provided by the office of Grants Accounting.

2411 Office of Research and Sponsored programs website:
 2412 <https://research.musc.edu/resources/orsp>

2413

2414

2415

2416 **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	

2417 The MUSC Responsible Conduct of Research policy is a key element of the overall
 2418 University Compliance policies (see MUSC Webpage:
 2419 <http://academicdepartments.musc.edu/ucor/rcor.htm>)

2420 and must be signed by all faculty, staff, and students of the university using research
 2421 resources or facilities, or receiving research funds administered by the university, and
 2422 those engaged in oversight of research facilities or funds. It was approved by the
 2423 University Board of Trustees and is presented in its entirety below.

2424 **Section I. Introduction**

2425 MUSC is committed to the highest standards of professional conduct; therefore all
 2426 members of the university community are expected to adhere to the highest ethical
 2427 standards of professional conduct and integrity. The values we hold among ourselves to
 2428 be essential to responsible professional behavior include: honesty, trustworthiness,
 2429 respect and fairness in dealing with other people, a sense of responsibility toward others
 2430 and loyalty toward the ethical principles espoused by the institution. It is important that
 2431 these values and the tradition of ethical behavior be consistently demonstrated and
 2432 carefully maintained.

2433 **Section II. Definitions**

2434 Members of the University Community or “Members”: faculty, staff, fellows, residents
 2435 and students or any individual employed by the university using university research
 2436 resources or facilities, or receiving research funds administered by the university, and
 2437 those engaged in oversight of research facilities or funds.

2438

Section III. Responsibilities

2439

2440

2441

2442

2443

2444

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.

2445

2446

2447

2448

2449

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.

2450

2451

2452

2453

2454

2455

2456

2457

2458

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.

2459

2460

2461

2462

2463

2464

2465

2466

2467

2468

2469

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.

2470

2471

2472

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.

2473

2474

2475

2476

2477

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

2478 rights to intellectual property must be protected. Student rights to data are expected to be
 2479 clearly specified. All documentation necessary to reconstruct investigations is expected to
 2480 be available and data are to be recorded in a timely and consistent manner.

2481 **Fiscal Responsibilities:** Members of the university community must not accept money or
 2482 gifts for research on behalf of the university or as part of their university activities except
 2483 as prescribed by university policy. All funds provided for research must be spent in ways
 2484 consistent with the funding documents and in compliance with the guidelines on
 2485 allowable costs. Members in charge of budgets have an obligation to monitor records of
 2486 expenditures for compliance with university policies and procedures and to allow these
 2487 records to be viewed by appropriate parties. Departmental files are the property of the
 2488 university.

2489 The university has the obligation to provide up-to-date records of financial transactions.

2490 **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	

2491 The principles that govern scientific research long have been established and applied in
 2492 the discovery of new knowledge. The faculties and administrators at academic medical
 2493 centers and teaching hospitals have a central and critical responsibility to maintain these
 2494 high ethical standards. Validity and accuracy in the collection and reporting of data are
 2495 intrinsically essential to the scientific process. Dishonesty in these endeavors is contrary
 2496 to the very nature of research; that is, the pursuit of truth.

2497 “Research misconduct means fabrication, falsification, or plagiarism in proposing,
 2498 performing, or reviewing research, or in reporting research results.” Honest error or
 2499 differences of opinion are not included in this definition. [42 CFR § 93.103]. A finding of
 2500 misconduct “requires that- (a) There be a significant departure from accepted practices of
 2501 the relevant research community; and (b) The misconduct be committed intentionally,
 2502 knowingly, or recklessly; and (c) The allegation be proven by a preponderance of the
 2503 evidence.” [42 CFR § 93.104].

2504 Primary responsibility for the integrity of all scientific research rests with the individual
 2505 researcher. The researcher accepts this responsibility with the understanding that the
 2506 commission of misconduct in the research process is a major breach of contract between
 2507 the researcher and the institution.

2508 Pursuant to the Final Rule notice of 42 CFR Parts 50 and 93 Public Health Service
 2509 Policies on Research Misconduct in the May 17, 2005 Federal Register effective June 16,

2510 2005, MUSC, as the awardee or applicant "institution," has complied with the necessary
 2511 assurance to the Department of Health and Human Services (HHS) that there are both
 2512 policies and procedures in place, and other institutional responsibilities are consonant
 2513 with 42 CFR Subpart C, § 93.300-319 of the Federal Register's Rules and Regulations.

2514 MUSC Policies and Procedures for Responding to Allegations of Research Misconduct
 2515 may be accessed at http://academicdepartments.musc.edu/research/ori/ric/pp_IV.html .
 2516 Both the inquiry and the investigative phases, as well as administrative actions in the
 2517 event of a finding of misconduct are included. Information at this Office of Research
 2518 Integrity website supersedes the *Faculty Handbook* in the event of a discrepancy.

2519 **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	

2520 [Intellectual Property Policy 10.04-10.18 in the 2007 edition of the *Faculty Handbook* applies to
 2521 faculty/staff who have intellectual property, conceived or first reduced to practice any invention
 2522 or trade secret, prior to May 15, 2008]

2523 **1.0 Purpose**

2524 The purpose of this document is to delineate the policy and procedures pertaining to
 2525 intellectual property created by employees, students, and visitors of the Medical University
 2526 of South Carolina ("MUSC") and its affiliates, including but not limited to the University
 2527 Medical Associates of the Medical University of South Carolina ("MUSC Physicians"), the
 2528 Medical University Hospital Authority (MUHA), the MUSC Foundation, and the MUSC
 2529 Foundation for Research Development ("FRD") (collectively the "MUSC Enterprise").
 2530

2531 **2.0 Objective**

2532 The objective of this Policy is to further the MUSC Enterprise's mission by (i) providing for
 2533 the necessary protections, incentives, and vehicles to encourage the discovery and
 2534 development of new knowledge for the public good; (ii) fostering research links and
 2535 collaboration with industry and other academic institutions; and (iii) enabling advancement
 2536 of economic development in South Carolina and beyond.
 2537

2538 **3.0 Applicability**

2539 3.1 Employees (as defined below) and Students (as defined below): This Policy
2540 applies as a condition of appointment or employment by the MUSC Enterprise to every
2541 employee, and as a condition of enrollment by every student, who during the period of their
2542 appointment, employment, or enrollment by the MUSC Enterprise shall:

- 2543 (a) Conceive or first reduce to practice, actually or constructively, any invention or trade
- 2544 secret;
- 2545 (b) Prepare a copyrightable work;
- 2546 (c) Contribute substantially to the existence of any tangible result of research; or
- 2547 (d) Otherwise contribute to the creation of an item of intellectual property.

2549 3.2 Visitors: This Policy applies as a condition of use of MUSC Resources (as defined
2550 below) to all persons who are not covered under Section 3.1 above, who through their use of
2551 MUSC Resources shall:

- 2552 (a) Conceive or first reduce to practice, actually or constructively, any invention or trade
- 2553 secret;
- 2554 (b) Prepare a copyrightable work;
- 2555 (c) Contribute substantially to the existence of any tangible result of research; or
- 2556 (d) Otherwise contribute to the creation of an item of intellectual property.

2558 Such persons are called "Visitors" herein. MUSC Enterprise personnel allowing Visitor
2559 access to MUSC Resources shall ensure that the Visitor has been notified of this Policy and
2560 obtained written consent from the Visitor, using approved forms available on FRD's
2561 website, to be bound by this Policy.

2562
2563 4.0 Definitions

2564 4.1 "Intellectual Property" as used herein is broadly defined to include inventions,
2565 discoveries, know-how, show-how, trade secrets, processes, unique materials, tangible
2566 results of research, copyrightable works, original data, and other creative or artistic works.
2567 Intellectual property includes, but is not limited to, that which is protectable by statute or
2568 legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask
2569 works, and plant variety protection certificates. It also includes the physical embodiments of
2570 intellectual effort including, for example, models, machines, devices, designs, apparatus,
2571 instrumentation, circuits, computer programs and visualizations,
2572 biological materials, chemicals, other compositions of matter, plants, and records of
2573 research.

2574
2575 4.2 "Copyright able Works " shall mean copyrightable works as defined under the laws of
2576 the United States, including 17 U.S.C. 101 et seq.

2577
2578
2579 4.3 "Traditional Academic Copyrightable Works" are a subset of Copyrightable works
2580 created independently and at the Creator's initiative for traditional academic purposes.
2581 Examples include manuscripts for scholarly journals, class notes, text books and
2582 supplemental materials, theses and dissertations, videos, digital video disks (dvds)
2583 containing audio, video, and/or interactive simulations as well as non-interactive
2584 demonstrations, compact disks containing audio, video and/or interactive simulations, as

2585 well as non-interactive demonstrations, articles, non-fiction, fiction, poems, musical
 2586 works, dramatic works including any accompanying music, pantomimes and choreographic
 2587 works, pictorial, graphic and sculptural works, or other works of artistic
 2588 imagination that are not created as a) an institutional initiative or b) with MUSC
 2589 Resources. Specifically excluded from this definition are software works.

2590
 2591 4.4 "Creator" means an Employee, Student, or Visitor who, individually or jointly with
 2592 others creates Intellectual Property and (1) meets the criteria for inventorship under United
 2593 States patent laws and regulations; (2) meets the criteria for author if Intellectual Property
 2594 is a work of authorship qualifying for protection under United States copyright laws and
 2595 regulations; or (3) is determined to have otherwise made a substantive intellectual
 2596 contribution to the development of the Intellectual Property and is named on the applicable
 2597 Intellectual Property disclosure form.

2598
 2599 4.5 "MUSC Resources" means the material use of facilities, supplies, materials, or other
 2600 resources of the MUSC Enterprise, with the exception of its library collections and other
 2601 resources that are freely available to the public. MUSC Resources do not include "incidental
 2602 uses" of resources as that term is described in the MUSC Policies and Procedures for
 2603 Employee Involvement in Entrepreneurial Activities.

2604
 2605 4.6 "Net Proceeds" means the net amount received by MUSC or its designee from the sale,
 2606 licensing or other disposition of any Intellectual Property, initially owned, pursuant to this
 2607 Policy, in whole or in part by MUSC, after deduction of all costs reasonably attributable to
 2608 the protection and distribution of such Intellectual Property, including any reasonable
 2609 expense of patent or copyright prosecution, maintenance, interference proceedings,
 2610 litigation, marketing or other dissemination and licensing.

2611
 2612 4.7 "Employees" means full-time and part-time faculty (of all ranks and status as
 2613 outlined in the MUSC Faculty Handbook) and all levels of full-time and part-time staff
 2614 employed by the MUSC Enterprise.

2615
 2616 4.8 "Students" means full-time and part-time students of all levels including those in
 2617 training, such as post doctoral fellows and residents.

2618 2619 5.0 Disclosure and Assignment Requirements

2620
 2621 5.1 Intellectual Property is required to be disclosed, pursuant to this Policy, by the
 2622 Creator to FRD or another designee as determined by MUSC, using approved forms
 2623 available on FRD's website. All disclosures are confidential. Ownership of the Intellectual
 2624 Property included in such disclosure shall be determined pursuant to the applicable
 2625 provisions of this Policy.

2626
 2627 5.2 Disclosure should be made in a timely manner upon the Creator's recognition that
 2628 Intellectual Property may have been created. Disclosure should be made prior to public
 2629 presentations or publications, or other dissemination of the Intellectual Property to third
 2630 parties whether public or confidential.

2631
2632
2633
2634
2635
2636
2637
2638
2639
2640
2641
2642
2643
2644
2645
2646
2647
2648
2649
2650
2651
2652
2653
2654
2655
2656
2657
2658
2659
2660
2661
2662
2663
2664
2665
2666
2667
2668
2669
2670
2671
2672
2673
2674
2675

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:

- 2676 (a) Works created pursuant to the terms of an MUSC Enterprise agreement with
- 2677 an external party;
- 2678 (b) Works created as a specific requirement of employment or as an assigned
- 2679 MUSC Enterprise duty that may be specified, for example, in a written job
- 2680 description or any employment agreement;
- 2681 (c) Works specifically commissioned by the MUSC Enterprise; and
- 2682 (d) Works that are also patentable
- 2683

2684 Nothing contained herein shall be interpreted to grant ownership to MUSC of Traditional
 2685 Academic Copyrightable Works that are manuscripts for submission to scholarly
 2686 journals, including electronic submissions which contain multimedia interactive
 2687 components.

2688

2689 6.5 Agreements Impacting MUSC Ownership

2690

2691 6.5.1 Sponsored Research Agreements: Ownership and disposition of Intellectual
 2692 Property may be governed in whole or in part by sponsored research agreements, which
 2693 may supersede certain provisions of this Policy. Prior to the execution of any sponsored
 2694 research agreement which would conflict with this Policy, the Office of Research and
 2695 Sponsored Programs must approve the agreement in question.

2696

2697 6.5.2 Consulting: Employees engaged in external consulting work or business are
 2698 responsible for ensuring that agreements emanating from such work are not in conflict
 2699 with MUSC Enterprise policies or with the MUSC Enterprise's contractual commitments,
 2700 including but not limited to MUSC's rights to certain Employee know-how pursuant to
 2701 this Policy. Such employees should make their university obligations known to others
 2702 with whom they make such agreements and should provide the parties to such
 2703 agreements a statement of applicable MUSC Enterprise policies regarding ownership of
 2704 intellectual property and related rights.

2705

2706 7.0 Commercialization of Intellectual Property

2707

2708 7.1 Commercialization

2709

2710 7.1.1 In making commercialization decisions for its Intellectual Property, MUSC, or its
 2711 designee, shall have full discretion, subject to the purpose, objectives, and requirements
 2712 of this Policy. MUSC has designated FRD, a not-for-profit foundation whose sole
 2713 purpose is to solely benefit MUSC, for the administration and commercialization of
 2714 Intellectual Property.

2715

2716 7.1.2 FRD shall keep the Creator reasonably informed of its commercialization efforts;
 2717 provided, however, if the Creator has an interest in an entity which desires to license or
 2718 otherwise make commercial use of the Intellectual Property, the Creator shall not be
 2719 privy to financial or other confidential information concerning the offers of competing
 2720 parties.

2721

2721 7.2 Timetable

2722
2723
2724
2725
2726
2727
2728
2729
2730
2731
2732
2733
2734
2735
2736
2737
2738
2739
2740
2741
2742
2743
2744
2745
2746
2747
2748
2749
2750
2751
2752
2753
2754
2755
2756
2757
2758
2759
2760
2761
2762
2763
2764
2765
2766
2767

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 FRD shall 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 its 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 to 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 foreseeable expected costs reasonably attributable to the Intellectual 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)

2768	1-\$10,000	100	0	0	0	0	0
2769	> \$10,000	40	10	15	10	20	5

2770
2771
2772
2773
2774
2775
2776
2777
2778
2779
2780
2781
2782
2783
2784
2785
2786
2787
2788
2789
2790
2791
2792
2793
2794
2795
2796
2797
2798
2799
2800
2801
2802
2803
2804
2805
2806
2807
2808
2809
2810
2811
2812
2813

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 Proceeds 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

2814 Property, equity shall not be considered Net Proceeds until the equity can be freely
2815 tradable or liquidated. MUSC and/or FRD shall not be responsible or liable for any
2816 valuation fluctuations of equity.

2817
2818 7.4.8 Creators are responsible for any tax consequences associated with their receipt of
2819 Net Proceeds.

2820
2821 7.4.9 In the event FRD is a third party not-for-profit entity, MUSC can cause FRD to
2822 make payments on MUSC's behalf pursuant to the schedule.

2823
2824 7.4.10 Angel Fund: The proceeds designated for the Angel Fund shall be paid to FRD
2825 with its own budget line and be used to further the development of emerging MUSC
2826 owned Intellectual Property as approved by FRD's Board of Directors. The Intellectual
2827 Property Committee shall be periodically informed by FRD regarding the use of these
2828 funds.

2829
2830 8.0 Faculty Cooperation

2831
2832 The Creator will use reasonable effort to cooperate and assist, at no expense to the
2833 Creator, in the commercialization efforts of FRD. The Creator shall execute
2834 appropriate documentation for the protection of the Intellectual Property.

2835
2836 Potential conflicts of interest that a Creator has with respect to Intellectual Property
2837 and its disposition under this Policy shall be disclosed by the Creator pursuant to appropriate
2838 MUSC Enterprise policy(ies).

2839
2840 9.0 Intellectual Property Committee

2841
2842 9.1 Membership: The Intellectual Property Committee ("IPC") shall be a standing
2843 committee and consist of members appointed by FRD and approved by MUSC, MUHA, and
2844 MUSCP. Members shall be chosen from the various colleges and departments of the MUSC
2845 Enterprise which generate disclosures of Intellectual Property. One member shall be
2846 designated by the Vice President for Research as the Chair. A student shall also be
2847 appointed to the committee by the Vice President for Research.

2848
2849 9.2 Duties: The IPC shall:

2850 (a) Provide advice to the MUSC Enterprise and FRD regarding implementation of this
2851 Policy, and undertake a periodic review of the Policy making recommendations for any
2852 revisions, if needed; FRD regarding implementation of this policy, and undertake a periodic
2853 review of

2854 the Policy making recommendations for any revisions, if needed;

2855 (b) Encourage compliance with this Policy through education of potential Creators of
2856 Intellectual Property, and through periodic meetings with those persons and entities
2857 responsible for implementation of this Policy.

2858

2859 9.3 Meetings: The IPC shall meet as needed and at such other times as requested by the Vice
2860 President for Research, FRD, the Chair, or by at least 1/3 of the committee members.

2861
2862 9.4 Dispute Resolution Procedures

2863
2864 9.4.1 A Creator, FRD, or MUSC Enterprise administration can request the IPC mediate a
2865 dispute arising under this Policy.

2866
2867 9.4.2 If a mediated resolution amongst the parties is not obtained, the Committee can
2868 make a recommendation to the Vice President for Research for a resolution of the
2869 dispute.

2870
2871 9.4.3 Mediation of a dispute under this policy shall not be required and shall not be
2872 considered to be part of any required administrative remedies available to an employee or
2873 student of the MUSC Enterprise.

2874

2875 **8. CONTRACT DISPUTE RESOLUTION and FACULTY GRIEVANCE**
 2876 **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	

2877 The right to grieve and appeal by any member of the faculty is recognized by the
 2878 administration and the Board. Presentation of grievances is made through the following
 2879 procedures established by and for the faculty and approved by the administration and the
 2880 Board of Trustees.

2881 **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	

2882 The Faculty Appointment Contract (FAC) clarifies an individual's activities and
 2883 responsibilities for the upcoming academic year and links the listed activities to
 2884 compensation. These contracts are offered in good faith between the faculty member and the
 2885 chair. They serve as a platform for discussing and resolving issues that could be
 2886 misinterpreted between a faculty member and the chair. To assure collegial working
 2887 relationships, the primary responsibility for resolving any dispute concerning the FAC lies
 2888 with the faculty member and the department chair / division chief. However, some issues in
 2889 a proposed FAC occasionally cannot be resolved at the department level.

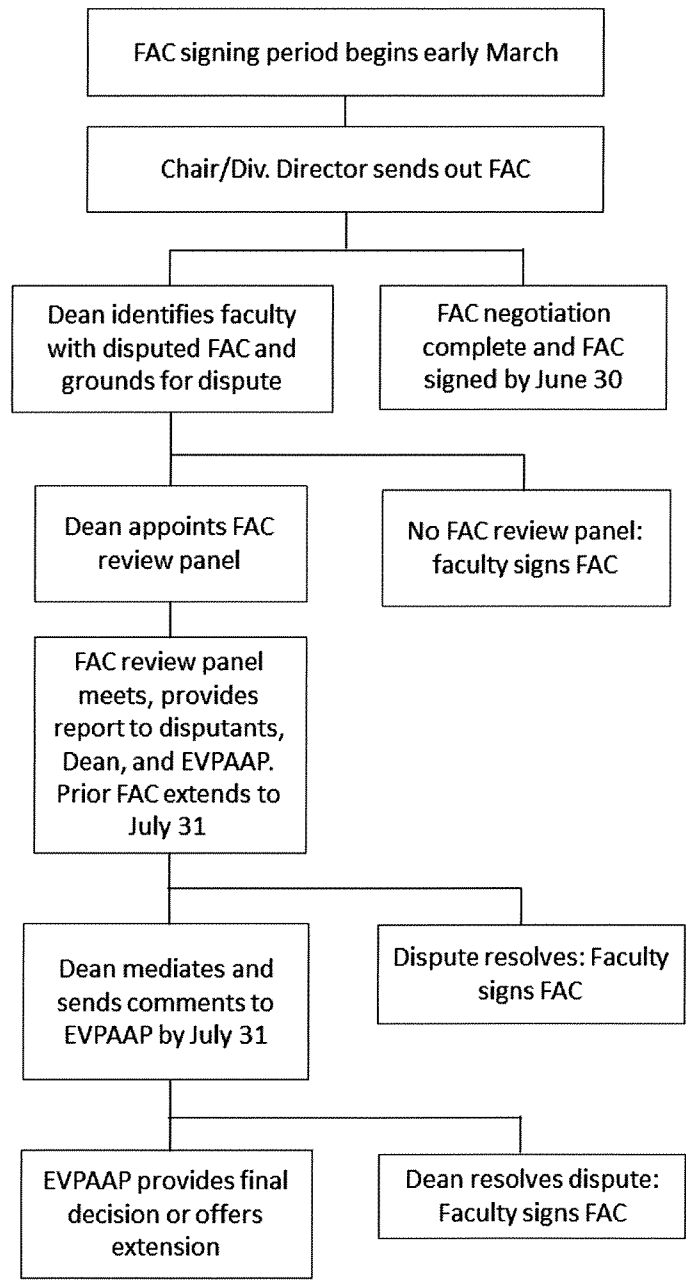
2890 The FAC signing period begins in early March and is to be completed by June 30. Any
 2891 faculty member unwilling to sign his/her draft FAC may request a formal review and
 2892 adjudication of the draft contract through their dean, who will make a formal request to the
 2893 Office of the Executive Vice President for Academic Affairs and Provost. If the faculty
 2894 member requests a review, the current FAC will be extended with appointment rights
 2895 continued until July 31, by the Executive Vice President for Academic Affairs and Provost,
 2896 or his/her designee. This should provide sufficient time for a review panel to gather facts
 2897 and hear from those involved as needed to clarify issues in dispute. The review panel will be
 2898 established by the Dean and be composed of faculty peers. The panel will have at least three
 2899 senior faculty members, excluding department chairs or division directors, and may include
 2900 faculty member(s) from another college. Panels are convened to review the issues and to
 2901 render an opinion to the disputants, the Dean, and to the Executive Vice President for
 2902 Academic Affairs and Provost. Each review panel member will sign a confidentiality

2903 agreement in order to encourage the free sharing of opinions and facts. Panel members may
2904 recuse themselves for perceived conflict of interest. The Executive Vice President for
2905 Academic Affairs and Provost makes the final MUSC decision regarding the FAC being
2906 offered.

2907 Both the faculty member and the chair or division directors shall have the opportunity to
2908 meet with the panel. The panel determines when to close fact-finding and hearing phases of
2909 the review and to begin deliberation. Following adequate deliberation on the issues, the
2910 panel shall submit a written recommendation to the disputants, the Dean, and the Executive
2911 Vice President for Academic Affairs and Provost. The Dean may mediate and resolve the
2912 dispute; however, if necessary, upon receipt of the Dean's comments on the Panel Report
2913 prior to July 31st, the Executive Vice President for Academic Affairs and Provost will
2914 provide the final written decision on the contested issue to all parties. If a resolution has not
2915 been achieved by July 31st, the Executive Vice President for Academic Affairs and Provost,
2916 or designee, can grant an additional extension to facilitate the resolution.

2917 For FAC disputes, this policy recognizes: 1) the importance of timely resolution, and 2)
2918 faculty desire for peer review at the college level. The flow chart below outlines this policy.
2919 The general grievance policy in Section 8.02 covers FAC disputes and complaints that
2920 cannot be resolved as described above in 8.01.

Faculty Appointment Contract (FAC) Flow Chart



2922 **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	

2923 The general grievance policy in this section covers complaints that cannot be resolved in an
 2924 informal way at the department or college level and which are not covered by other
 2925 procedures.

2926 In any community of free people, even under the best of circumstances, complaints will be
 2927 generated from time to time by individuals or groups who feel that a condition exists that is
 2928 detrimental to their professional careers or personal well-being.

2929 A community of academicians operates on the premise that a complaint brought by one or
 2930 more of its members against another or against the institution itself is best resolved when the
 2931 parties involved are encouraged to seek a just and equitable solution.

2932 When individual efforts fail to produce a satisfactory resolution of a complaint, it behooves
 2933 the greater academic community to intercede so that an equitable solution is obtained with
 2934 dispatch.

2935 Therefore, a grievance and appeal procedure is established to handle complaints that cannot
 2936 be resolved in an informal way at the department or college level and which are not covered
 2937 by other procedures.

2938 Participation in a grievance procedure in any capacity, including as a grievor, within the
 2939 scope of such grievance proceeding is considered by the University to be within the scope of
 2940 duties of a faculty member. The faculty member shall be afforded the same protection for
 2941 such participation as for any other faculty duties subject to the provisions of the liability
 2942 insurance policies purchased to cover liability of faculty members.

2943 The granting or the failure to grant tenured status to teaching and research faculty,
 2944 professional librarians, academic administrators and all other persons holding faculty
 2945 appointments or nonrenewal of employment contracts at the end of the contract term shall
 2946 not be subject for consideration by this grievance procedure (Section 8-17-380, S.C. Code of
 2947 Laws 1976). Section 8.01 governs resolution of faculty contract and post-tenure review
 2948 disputes.

2949 **8.02.01 Initial Stage and Grievance Procedure**

2950 A complaint concerning any condition that is felt to be detrimental to the complainant's
 2951 professional development or personal well being shall first be directed as described below:

- 2952 1) Complaints against a member of the complainant's department shall be explained to the
 2953 departmental chair. When the complaint is against the chair, it is lodged with the dean of
 2954 the college.
 2955 2) Complaints against a member or chairman in the complainant's college, but not a
 2956 member of the complainant's department, shall be lodged with the dean of the college.
 2957 3) Complaints against a member of another college shall be lodged with the dean(s) of the
 2958 college(s) involved.
 2959 4) Complaints against any administrator shall be lodged with the next higher level of
 2960 administration.

2961 The person with whom the complaint is lodged shall attempt to mediate an amicable
 2962 solution, or to suggest another person who might more effectively mediate an amicable
 2963 solution.

2964 **8.02.02 Grievance Procedure**

- 2965 1) In the event that the complaint is not resolved within a reasonable period of time, the
 2966 complainant may submit a written request for a hearing. The proper avenue for such a
 2967 request is through established channels of authority to the Executive Vice President for
 2968 Academic Affairs and Provost. Once initiated, a grievance or appeal must be afforded full
 2969 due process regardless of changes in employment status.
 2970 2) The grievance or appeal shall be referred by the Executive Vice President for Academic
 2971 Affairs and Provost to a Standing University Faculty Hearing Committee consisting of
 2972 three (3) faculty members recommended by the Faculty Senate, three (3) faculty
 2973 members recommended by the Provost's Council, and one (1) faculty member selected
 2974 by the Executive Vice President for Academic Affairs and Provost. The Committee may
 2975 elect a chair, or may request that the Executive Vice President for Academic Affairs and
 2976 Provost designate one of the seven individuals to be chair. Additional individuals who
 2977 may be needed in case of a conflict of interest with a standing committee member will be
 2978 selected from individuals representing each college and the Academic Affairs Faculty ,
 2979 who have received training in mediation. Faculty Senate and Provost's Council may
 2980 nominate individuals to receive mediation training and to serve in the Pool of potential
 2981 Hearing Committee Members. This Pool (referred to as the Standing University Faculty
 2982 Hearing Committee Pool) will be composed of one member from each college and the
 2983 Academic Affairs Faculty nominated by the Faculty Senate, and one member from each
 2984 college and the Academic Affairs Faculty nominated by the Provost's Council. Standing
 2985 University Faculty Hearing Committee Pool members shall serve terms of up to three
 2986 years, staggered such that there will be some continuity of membership from year to year.
 2987 3) The grievance or appeal shall be in writing and shall specify the condition(s) felt to be
 2988 detrimental to the individual's professional development or personal well-being and the
 2989 manner in which it/they may affect the complainant adversely. The statement shall
 2990 specify the reason(s) why such a condition is/are felt to be the responsibility of a person
 2991 or persons named in the grievance or appeal, and it shall suggest the changes in
 2992 conditions that would satisfy the complainant.
 2993 4) Upon receipt of a grievance or appeal, and in no case longer than thirty (30) days after the
 2994 receipt thereof, the Executive Vice President for Academic Affairs and Provost will

2995 convene a seven member Hearing Committee at full strength from individuals selected
 2996 from the Standing University Faculty Hearing Committee pool.

2997 **8.02.03 Action by the Hearing Committee**

2998 1) When a grievance or appeal is referred to the Faculty Hearing Committee, the chair of the
 2999 Committee shall distribute copies of all pertinent materials to the parties involved who
 3000 have not already received them and to the members of the Committee within one week of
 3001 the referral.

3002 The Committee shall refuse to hear a grievance or appeal if it determines that:

- 3003 a) The parties have made inadequate effort to resolve the dispute by discussion and
 3004 agreement or have not utilized other reasonably available avenues for relief within the
 3005 division, department, college(s);
- 3006 b) The dispute is patently frivolous or plainly without merit;
- 3007 c) The relief sought is beyond the power of the university to grant;
- 3008 d) The grievance is insufficiently related to the concerns of the academic community;
- 3009 e) The dispute is within the jurisdiction of another committee or unit of the university.
- 3010 2) Within twenty-one (21) days of the distribution of the materials pertinent to the grievance
 3011 or appeal, the Committee shall meet and decide whether to hear the case. If the
 3012 Committee decides to hear the case, it shall immediately notify the principals and shall
 3013 commence hearings within another seven (7) days. As it deems appropriate, the
 3014 Committee may call any witnesses and examine any documents in addition to those
 3015 presented by the parties to the grievance or appeal. The Committee shall prepare and
 3016 keep a transcript of its proceedings.
- 3017 3) After hearing the parties to the grievance or appeal and the witnesses, the Committee
 3018 shall deliberate in executive session. It shall then determine to: (a) recommend an
 3019 appropriate action or (b) dismiss the grievance. The chair shall send, in writing, the
 3020 Committee's recommendation(s) to the parties. It shall then declare the hearing
 3021 concluded.
- 3022 4) The chair also shall send the Committee's recommendation(s) and rationale for it/them to
 3023 the Executive Vice President for Academic Affairs and Provost of the university for
 3024 consideration and recommendation by that officer. This report shall be submitted within
 3025 ten (10) days after the conclusion of the hearing.
- 3026 5) In preparing the written recommendations to the Executive Vice President for Academic
 3027 Affairs and Provost, the Committee shall consider only the evidence presented at the
 3028 hearing and such written and oral arguments as the Committee, in its discretion, may
 3029 allow.
- 3030 6) Under unusual and compelling circumstances, the Committee, with the concurrence of
 3031 the Executive Vice President for Academic Affairs and Provost, may extend any
 3032 deadlines upon written notification to the parties to the grievance or appeal.

3033 **8.02.04 Action by the Administration of the University**

3034 Within thirty (30) days of the receipt of the Faculty Hearing Committee recommendations
3035 and rationale, the Executive Vice President for Academic Affairs and Provost of the
3036 university, who is ordinarily appointed by the President to act on her/his behalf, shall review
3037 the record and notify the parties to the grievance or appeal and the chair of the Faculty
3038 Hearing Committee of his/her recommendation in the case. In the event that the Executive
3039 Vice President for Academic Affairs and Provost has been a participant in the hearing of the
3040 aggrieved faculty member or for other valid reasons, the Executive Vice President for
3041 Academic Affairs and Provost may disqualify herself/himself and request the President to
3042 appoint another designee for said review.

3043 If the Executive Vice President for Academic Affairs and Provost concurs in the
3044 recommendation of the Committee that is favorable to the faculty member, no further action
3045 in the matter may be taken. If the Executive Vice President for Academic Affairs and
3046 Provost either declines to accept a Committee recommendation that is favorable to the
3047 faculty member, or concurs in a Committee recommendation that is unfavorable to the
3048 faculty member, the faculty member may appeal to the Board for review. The appeal shall
3049 be submitted in writing to the Secretary of the Board within ten (10) days following the
3050 decision of the Executive Vice President for Academic Affairs and Provost who ordinarily
3051 acts as the designee of the President. It shall state the decision complained of and the redress
3052 desired.

3053 **8.02.05 Action by the Board**

3054 The appeal shall be placed on the next regular Agenda of the Board for the consideration of
3055 the Board.

3056 The Board in its sole discretion may grant a review, but if granted the Board shall not be
3057 required to conduct an additional hearing or hear arguments of the faculty member or
3058 counsel but may review the record of the proceedings. The Board, at its discretion, may elect
3059 to hear arguments, oral or written, by both of the principals or their representatives and may
3060 consult with the hearing Committee.

3061 Any action taken by the Board shall be final.

3062 **8.02.06 Definition of Rights and Challenges in a Grievance Procedure**

- 3063 1) Challenge of Committee Members:
 - 3064 a) Upon the request of a party to a grievance, a member of the Committee may be
 - 3065 removed from considering a case if deemed biased or in conflict of interest. If a
 - 3066 member of the Committee refuses to remove herself/himself when challenged for
 - 3067 such cause, the challenging party may appeal to the entire Committee who shall make
 - 3068 a final determination of the challenge. A Committee member may disqualify
 - 3069 herself/himself.
 - 3070 b) If s/he so desires, each party shall have, in addition, a challenge without stated cause.
 - 3071 A member so challenged shall not consider the case.
- 3072 2) To Present Witnesses and Supporting Materials:

3073 Each party involved in a grievance or appeal may:

- 3074 a) submit any written materials in support of his/her position;
 3075 b) present witnesses at hearings.

3076 3) To Have an Advisor During the Hearing:

- 3077 a) Each party to a grievance or appeal may be accompanied in the hearing by a non-
 3078 participating advisor of his/her choice and may consult with the advisor throughout
 3079 the hearing.
 3080 b) If any party chooses to have participating legal counsel present, written notification
 3081 must be presented to the chair of the Committee at least five (5) days before the
 3082 hearing. The chair shall then promptly notify the other parties. The Hearing
 3083 Committee conducts an internal administrative review, rather than a legal proceeding.
 3084 Legal counsel may advise, but may not participate in the hearing. The Committee
 3085 chair, in consultation with University General Counsel, may remove any advisor from
 3086 the hearing should said advisor persist in attempts to participate in the hearing [rather
 3087 than to render advice to any participant(s)].

3088 4) To Have an Observer Attend Hearings:

3089 At the request of any party to a grievance or appeal, or at the request of the Committee
 3090 hearing the case, a representative of a responsible professional or educational association
 3091 shall be permitted to attend hearings as an observer. The chair will determine the
 3092 qualifications and responsibility of the association.

3093 **8.02.07 Access to Records of Hearings**

- 3094 1) A written record shall be made of the proceedings during hearings.
 3095 2) Each party to a grievance or appeal shall have access to all records of the hearing and,
 3096 should s/he request it, shall be furnished, upon payment of reasonable charges for
 3097 transcription or reproduction, a record of the proceedings. (A copy of the official record
 3098 of the proceedings, in whatever form it is made, shall satisfy this requirement.)

3099 **8.02.08 To Receive Expeditious Consideration**

- 3100 1) The parties to any grievance or appeal have the right to expeditious consideration at all
 3101 stages of these procedures.
 3102 2) The Hearing Committee is expected to formulate its written recommendation(s) and to
 3103 communicate it/them to the parties to the grievance or appeal within ten (10) days of the
 3104 conclusion of the hearing.

3105 **8.02.09 Annual Report of the Chair of the Hearing Committee**

3106 Each July the chair of the Hearing Committee shall make a summary of formal grievance
 3107 and appeal activities and statistics on cases in progress and those settled during the
 3108 preceding year. S/he shall send this report to the President of the Faculty Senate, the
 3109 Executive Vice President for Academic Affairs and Provost, and to the President of MUSC.

3110 **9. FACULTY SEPARATION**

3111 **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	

3112 Tenure terminates when a faculty member resigns or retires. Tenure may also be terminated
 3113 for cause. Cause includes one or more of the following:

- 3114 a) Neglect or refusal to perform the duties and responsibilities of the academic rank to
 3115 which the faculty member is appointed, or performance below the standards generally
 3116 accepted for the rank.
- 3117 b) Conduct seriously prejudicial to the Medical University of South Carolina through
 3118 infraction of the law, moral turpitude, or infraction of commonly accepted standards of
 3119 behavior in academic and professional communities.
- 3120 c) Inability to perform the usual duties because of physical or mental incapacities.
 3121 Terminations for medical reasons must be based upon clear and convincing medical
 3122 evidence.
- 3123 d) Documented evidence of financial exigencies or need for curtailment or discontinuance
 3124 of programs, departments, colleges or positions. The administration shall seek
 3125 appropriate faculty input in arriving at such decisions and shall observe every effort to
 3126 make suitable reassignments of displaced personnel. In such decisions, appropriate
 3127 weight will be given to seniority of service. The place of any faculty member so released
 3128 shall not be filled within a period of two years, unless the released faculty member has
 3129 been offered reappointment and has declined or failed to respond within a specific and
 3130 reasonable period of time.

3131 In instances involving termination for cause, the faculty member has the right to appeal through
 3132 the Faculty Grievance and Appeal Procedure (Section 8.02).

3133 **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	

3134 The President may remove a faculty member for cause at any time, including termination or
 3135 removal prior to hearing. Should such action be taken, the President shall implement a full

3136 hearing pursuant to the grievance procedure within sixty (60) days of said removal. Prior to
3137 the presentation of notice of dismissal, discussions concerning mutually agreeable settlement
3138 may be held through the organized administrative structure between the faculty member and
3139 the administrative officer(s) as designated by the President. Except for summary termination
3140 or removal by the President, termination of tenure for cause, unless waived by the faculty
3141 member involved, will be preceded by the following:

3142 1) For termination pertaining to:

3143 a. Quality of work - please refer to Section 5.05 Post Tenure Review.
3144

3145 This procedure serves as the initial stage of the Faculty Grievance and Appeal Procedure.
3146 Referral to the Executive Vice President for Academic Affairs and Provost will actuate the
3147 Grievance Procedure.
3148

3149 b. Prejudicial conduct and for precedence for rectifying the situation - the appropriate
3150 dean shall meet with the faculty member to discuss the nature of the conduct. The
3151 President may suspend the faculty member until the consequences of due process have
3152 been accomplished. A written summary of the meeting shall be provided to the faculty
3153 member who must abide by its terms. Failure of the dean to reach accord with the faculty
3154 member, or failure of the faculty member to meet the terms of the summary, shall result
3155 in the matter being referred to the Executive Vice President for Academic Affairs and
3156 Provost.
3157

3158 c. Incapacity - the department chair shall meet with the faculty member to document the
3159 nature and extent of the incapacity and forward a copy of the documentation to the dean,
3160 who shall refer the matter through appropriate channels to the Executive Vice President
3161 for Academic Affairs and Provost.
3162

3163 d. Abolition or discontinuance of positions or programs - the President of the University
3164 through Executive Vice President for Academic Affairs and Provost notifies the dean of
3165 the college concerned of such exigencies. Written notice of termination, through
3166 appropriate channels, is given to the faculty member(s) involved by the respective dean.
3167 Such notice is given at least twelve months in advance of the termination, to the extent
3168 that appropriated funds are available and legislation permits. Prior to the written
3169 termination notice, the dean and the Executive Vice President for Academic Affairs and
3170 Provost will have made reasonable efforts to place the faculty member(s) in any existing
3171 faculty vacancies within the university, consistent with the faculty member's
3172 qualifications and area of expertise. The faculty member(s) shall have a right to a
3173 hearing under the Faculty Grievance and Appeal Procedure.
3174

3175 *Procedures a) through c) serve as the initial stages of the Faculty Grievance and Appeal*
3176 *Procedure. Referral to the Executive Vice President for Academic Affairs and Provost*
3177 *will actuate the Grievance Procedure*

3178 2) Until a final decision concerning termination of tenure has been reached, the appropriate
 3179 dean and the Executive Vice President for Academic Affairs and Provost, upon approval
 3180 by the President, may suspend or assign the faculty member to other duties. Before
 3181 suspending a faculty member, the dean shall consult with the Appointment, Promotion
 3182 and Tenure Committee of his/her college. A faculty member who has been suspended
 3183 will suffer no loss of salary unless his/her appointment is duly terminated, in which
 3184 event the, subject to the approval of the President and the Board, will determine the date
 3185 of termination. In determining the date, the Executive Vice President for Academic
 3186 Affairs and Provost may take into account the length and quality of service of the faculty
 3187 member.

3188 **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	

3189 Unless otherwise stated by a written contract of appointment, all non-tenured faculty
 3190 members are under contract for one (1) year from the date of their employment with the
 3191 department. For appointments other than 12-months, the contract period shall be stated in
 3192 writing at the time of appointment or employment.

3193 State legislation (S.C. Code of Laws, as amended, Section 8-17-380)
 3194 (<http://www.scstatehouse.gov/code/t08c017.php>) provides that non-renewal of employment
 3195 contracts at the end of the contract term is not grievable by the mechanism outlined in the
 3196 Code.

3197 Written notice of the intention not to renew the appointment of a non-tenured faculty
 3198 member shall be given, to the extent that appropriated funds are available and legislation
 3199 permits, as follows:

- 3200 1) At least three (3) months prior to the expiration of the most recent contract for faculty
- 3201 with the Medical University if the initial contract was for a one (1) year term.
- 3202 2) At least six (6) months prior to the expiration of the most recent contract for faculty
- 3203 appointed under a second-year contract with the department. Previous service to the
- 3204 university to other departments or capacities is calculated for notice purposes).
- 3205 3) At least one (1) year prior to the expiration of the most recent contract for faculty under
- 3206 a third (3rd) year or subsequent-year contract with the department.

3207 **9.04 Dismissal For Cause Before the End of a Specific Contract Period for Non-Tenured**
 3208 **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	

3209 Cause or grounds for dismissal of a non-tenured faculty member before the end of a specific
 3210 contract period are the same as those set forth for revocation of tenure (see Section 9.02,
 3211 Procedures for Termination of Tenured Faculty).

3212 **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	

3213 Under ordinary circumstances, a faculty member is expected to fulfill his or her contractual
 3214 obligations to the university. Letters of resignation requesting release from those contractual
 3215 obligations prior to the end of a contract period may be accepted by the appropriate
 3216 department chair or administrator if such actions are mutually acceptable. In the event the
 3217 resignation is not accepted by the university, the faculty member shall complete his or her
 3218 contractual service for the year in question. Faculty members who plan to leave university
 3219 employment at the end of a contract period shall give sufficient notice and clear all financial
 3220 and other obligations.

3221 **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	

3222 Information regarding eligibility and procedures for retirement are contained in
 3223 <https://web.musc.edu/human-resources/university-hr>

3224

3225 **10. UNIVERSITY HUMAN RESOURCES POLICIES**

3226 **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	

3227 **10.01.01 Leave with Pay**

3228 **Annual Leave**

3229 Eligible full-time faculty members accrue 176 hours of annual leave (22 working days) per
 3230 fiscal year (July 1 – June 30). Leave is accrued on a monthly basis provided the faculty
 3231 member is in a pay status for at least one-half of the workdays of the month. Faculty
 3232 members continue to accrue annual leave while on annual leave, sick leave or other
 3233 authorized leave with pay. No leave is accrued if the faculty member is in a leave without
 3234 pay status. The maximum amount of unused annual leave that may be carried over into a
 3235 new fiscal year (July 1- June 30) is 360 hours (45 days).

3236 Eligible part-time faculty, with a twelve-month contract will accrue proportionate annual
 3237 leave benefits based on the percentage of time worked. As with full-time faculty, the
 3238 maximum amount of unused leave that part-time faculty may carry over into a new fiscal
 3239 year is 360 hours (45 days).

3240 Eligible faculty with nine-month contracts are entitled to accrue and use annual leave during
 3241 the period of their contract. The amount of accrual will be 75% (16.5 days) of the amount
 3242 accrued by full-time twelve-month faculty. As with other faculty, 360 hours (45 days) is the
 3243 maximum amount of unused leave that faculty with nine-month contracts may carry over
 3244 into a new fiscal year.

3245 As far as possible, leave shall be scheduled in accordance with the preference of the faculty
 3246 member. However, leave shall be approved by the appropriate supervisor/administrator to
 3247 assure efficient operation. Recognizing the nature of academic responsibility and the high
 3248 priority of class scheduling, faculty may be granted annual leave before it is earned.

3249 Faculty members may use up to a maximum of 240 annual leave hours (30 days) in any one
 3250 fiscal year, at the department's discretion

3251 Twelve-month faculty (full & part-time) who leave the employment of MUSC who have
3252 unused annual leave are entitled to a lump-sum payment for such leave not to exceed 360
3253 hours (45 days), to be calculated as follows:

3254 University hourly rate multiplied by number of hours of accrued, unused annual leave.
3255 Earnings are taxed as extra income per IRS regulations. Contact the HR Benefits office to
3256 discuss the option of deferring a portion of the payment to an approved supplemental
3257 retirement account.

3258 **Official Holidays**

3259 Holidays observed by the University in accordance with State regulations, can be found at
3260 the following link:

3261 <https://horseshoe.musc.edu/human-resources/univ/employee-corner/leave/holidays>. If
3262 conditions preclude taking the holiday at the prescribed time, comparable time must be
3263 taken within one year; there is no provision for payment for earned but unused holidays.

3264 **Sick Leave**

3265 Eligible full-time faculty members accrue sick leave at the rate of 10 hours per month on a
3266 calendar year basis for a total of 15 working days. Leave is accrued provided the faculty
3267 member is in a pay status for at least one-half of the workdays of the month. Faculty
3268 members continue to accrue sick leave while on annual leave, sick leave or other authorized
3269 leave with pay. No leave is accrued if the faculty member is in a leave without pay status.
3270 The maximum amount of unused sick leave that may be carried over into a new fiscal year is
3271 1,440 hours (180 days). Eligible part-time faculty, working 50% of the time or more, will
3272 accrue sick leave on a prorated basis.

3273 **Leave Donation**

3274 Excess sick leave may be donated to the MUSC Catastrophic Leave Program (Please refer
3275 to HRM Policy #48, Catastrophic Leave Program).

3276 Faculty may also donate annual leave to the catastrophic leave pool, as long as the eligibility
3277 requirements are met. Faculty annual leave donations will be designated for faculty annual
3278 leave requests. The department of the requesting faculty member should ensure that the
3279 leave recipient does not receive or use transferred annual leave from the pool after the
3280 personal emergency ends, and HR should be notified immediately.

3281 **For Additional information, see the following links:**

3282 University HR Policies

3283 **10.01.02 Extended Leave without Pay**

3284 Extended leaves of absence without pay may be granted by the President, through regular
3285 administrative channels, under circumstances wherein the best interests of MUSC would be
3286 served through granting such leave. Authorization may be considered in such cases as:

3287 (1) Absence for advanced academic training, research, or other experience which
3288 leads to increased competence and promotes the interests of the Medical
3289 University as well as those of the faculty member, and

3290 (2) Absences due to prolonged illness or for personal reasons when such absences
3291 extend beyond available annual leave or sick leave. Sick leave must be exhausted
3292 first before leave without pay is granted. Normally, the total period of absence
3293 will not exceed six months (including up to 480 hours approved under FMLA for
3294 qualified conditions) and may be granted in increments depending on the
3295 circumstances.

3296 The granting of leave-without-pay is a matter of administrative discretion. The
3297 administrative channels for request for leave-without-pay shall be the same as for other
3298 faculty actions.

3299 Although sick leave or annual leave does not accrue during periods of leave-without-pay,
3300 the accumulated leave balances are not forfeited.

3301 A member of the faculty who has acquired tenure shall retain tenure during any period of
3302 leave; however, time served on leave-without-pay may not be counted toward acquiring a
3303 sabbatical leave.

3304 **10.01.03 Family and Medical Leave Act**

3305 A faculty member who has worked for a State of South Carolina employer for 12 months
3306 or more and has worked at least 1,250 hours during the preceding 12 months, may be
3307 eligible for Family and Medical Leave.

3308 See HR Policy #30 (Family Medical Leave Act)

3309 **10.01.04 Authorized Absences**

3310 **Sabbatical Leave**

3311 See Section 6.01 Sabbatical Leave

3312 **Attendance in Court**

3313 When a faculty member is a voluntary witness in litigation as an individual, and not in an
3314 official capacity, the time taken from work shall be charged as annual leave or leave-
3315 without-pay, as appropriate.

3316 When, in obedience to a subpoena or other legal direction by proper authority a faculty
3317 member appears to testify, serve as a witness, or serve on a jury for the Federal
3318 Government, the State of South Carolina or one of its political subdivisions, the faculty
3319 member shall be granted leave-with-pay for the necessary period of time which shall be
3320 recorded as Administrative Leave.

3321 **Death in Family**

3322 Supplemental leave (with pay) may be authorized by the department for a death in the
3323 family. This leave, which shall not exceed three consecutive working days, may be
3324 granted in the case of death of the following relatives of the faculty member, or legal
3325 spouse of the employee:

- 3326 • Spouse
- 3327 • Parents
- 3328 • Legal Guardians
- 3329 • Brothers or Spouse of Brothers
- 3330 • Sisters or Spouse of Sisters
- 3331 • Children or Spouse of Children
- 3332 • Grandparents or Great-Grandparents
- 3333 • Grandchildren or Great-Grandchildren

3334 **Voting**

3335 Each faculty member who is eligible to vote in a South Carolina primary or general
3336 election will be authorized up to two hours leave for voting. If possible, voting should be
3337 done before or after work.

3338 **Military Leave**

3339 In accordance with State Law, a faculty member is entitled to a maximum of 15 work
3340 days of paid leave in any one calendar or fiscal year for active duty training with the
3341 South Carolina National Guard or one of the Reserve units of the Armed Forces of the
3342 United States. These 15 days need not be consecutive and may be used intermittently
3343 throughout the year. Insofar as possible, such training should be arranged to be of least
3344 interference with regular academic, research or clinical commitments.

3345 In the event a faculty member is called upon to serve during an emergency ordered by the
3346 Governor or the Armed Forces concerned, s/he shall be entitled to an additional leave of
3347 absence with pay not to exceed 30 working days.

3348 A faculty member is normally entitled to leave-without-pay during an extended period for
3349 up to five years for active military duty. After such leave, the faculty member may return
3350 to active employment with MUSC in a comparable position to the one held at the time

3351 such leave was granted, in accordance with the MUSC Military Leave Policy and the
 3352 Uniformed Service Employment and Reemployment Rights Act (USERRA).

3353 **Assault by Patient**

3354 Covered employees who are temporarily disabled as a result of an assault by a patient or
 3355 client are entitled to the use of supplemental leave with pay during the period of
 3356 disability.

3357 **Donating Blood**

3358 Supplemental leave for blood donation is limited to four (4) hours. A department head
 3359 may require documentation of the donation.

3360 **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	

3361 Time related to professional development, conferences, off-site work activities are not
 3362 charged as leave; however, it is required to be documented for insurance and liability
 3363 purposes. As far as possible, leave shall be scheduled in accordance with the preference of
 3364 the faculty member. However, leave shall be approved by the appropriate
 3365 supervisor/administrator to assure efficient operation.

3366 **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	

3367 Faculty members who resign, retire, or for other reasons terminate their employment with
 3368 MUSC must contact the Department of Human Resources Management concerning the
 3369 action they need to take with regard to the following: a) Retirement, b) State Health, Dental

3370 and Vision Insurance, c) State Optional or Dependent Life Insurance, d) Supplemental Long
3371 Term Disability and flexible spending accounts, e) Tax Sheltered Annuities, and d) Deferred
3372 Compensation Plans.

3373 Faculty employed by MUSC-affiliated institutions or organizations, such as VA Medical
3374 Center or MUSC Physicians, should refer to their Human Resource Management policies for
3375 eligible benefits.

3376 **10.02.01 General Employment Benefits**

3377 For information related to the core State benefits provided by the University, contact MUSC
3378 Human Resources Management at 843-792-2071, opt 4 or benefits@muscd.edu. Contact
3379 information for counselors can be found on the directory. [http://horseshoe.musc.edu/human-](http://horseshoe.musc.edu/human-resources/univ/benefits/contacts)
3380 [resources/univ/benefits/contacts](http://horseshoe.musc.edu/human-resources/univ/benefits/contacts)

3381 For assistance with supplemental benefits offered to clinical faculty by MUSC Physicians,
3382 contact MUSC Physicians at 843-852-3100 or muscbenefits@muscd.edu.

3383 To find an overview of benefits go to:

3384 University: <http://academicdepartments.musc.edu/hr/university/benefits>
3385 Physicians: <http://horseshoe.musc.edu/human-resources/musc/benefits>

3386 Additional Perks and Discounts:

3387 Other Benefits- Perks and Discounts

3388 The comparison between University and MUSC Physicians benefits is located at the
3389 following link:

3390 Faculty Benefits
3391 (<http://academicdepartments.musc.edu/hr/university/benefits/faculty%20benefits.htm>)

3392 **10.02.02 Liability Insurance**

3393 Pursuant to State law, faculty members and other employees are insured for all activities
3394 within the scope of their duties for MUSC. This State mandated insurance coverage is
3395 provided through the South Carolina Insurance Reserve Fund. Specific information
3396 regarding coverage may be obtained from the Office of University Risk Management.

3397 If an event occurs which may expose a health provider or the institution to a claim or legal
3398 action, notify the University Risk Management office immediately. They will, in turn, notify
3399 appropriate persons in the affected areas and hospitals.

3400 **10.03 Nepotism**

3401 Nepotism

3402 **10.04 Employee Health Screening Policy and Criteria**

3403 Employee Health Services

3404 **10.05 Criminal Record Searches**

3405 Criminal Record Searches

3406

3407 **10.06 Drug Free Workplace**

3408 Drug-Free Workplace

3409

3410 **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	

3411 **11.01 Affirmative Action**

3412 <https://education.musc.edu/leadership/diversity/equal-employment>

3413

3414 **11.02 Infectious Diseases**

3415 Bloodborne Pathogen Protocols:

3416 <http://horseshoe.musc.edu/everyone/health-wellness/employee-health/bloodborne-pathogen-exposures>

3417

3418

3419 Infectious Disease Exposure Questionnaire:

3420 <http://horseshoe.musc.edu/~media/files/services-all-files/health-wellness-files/employee-health-files/infectious-disease-exposure-form-all-diseases.pdf?la=en>

3421

3422

3423 Personal Protective Equipment Policy:

3424 <https://horseshoe.musc.edu/~media/files/univ-files/risk-management->
 3425 [files/updated-forms/personal-protective-equipment-policy.pdf?la=en](https://horseshoe.musc.edu/~media/files/univ-files/risk-management-files/updated-forms/personal-protective-equipment-policy.pdf?la=en)

3426

3427 **11.03 Sexual Harassment Policies**

3428 <https://education.musc.edu/leadership/diversity/title-ix>

3429

3430 **11.04 Use of the University Name, Seal, or Logos**

3431 <https://web.musc.edu/about/leadership/institutional-offices/communications/brand>

3432

3433 **11.05 Computer Use Policy**

3434 <https://web.musc.edu/ocio/policies/cup.pdf>

3436

3437 **11.06 Emergency / Disaster Preparedness**

3438 [https://research.musc.edu/resources/doing-research/policies/disaster-](https://research.musc.edu/resources/doing-research/policies/disaster-preparedness-policy)
 3439 [preparedness-policy](https://research.musc.edu/resources/doing-research/policies/disaster-preparedness-policy)

3440

3441

3442 **11.07 MUSC Honor Code**

3443 Faculty members who suspect that conduct constituting a violation of the Honor Code
 3444 occurred in academic work overseen by them are required to immediately report the
 3445 violation to the Honor Council. The matter will be handled in accordance with MUSC's
 3446 Honor Code, rather than direct action by the faculty member. The faculty will honor the
 3447 decision and sanction imposed by the Honor Council related to the suspected violation. The
 3448 faculty retain the responsibility for assessing the quality of the academic work using an
 3449 objective assessment. If the Honor Council determines no violation occurred the objective
 3450 grade for the assignment will be upheld.

3451 <http://www.musc.edu/honorcode>

3452

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.

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 6—
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 6

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,)

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. _____

EXHIBIT 6

TO MASTER EXHIBITS

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 <adaia@musc.edu>
Subject: New Contact Info

CAUTION: External

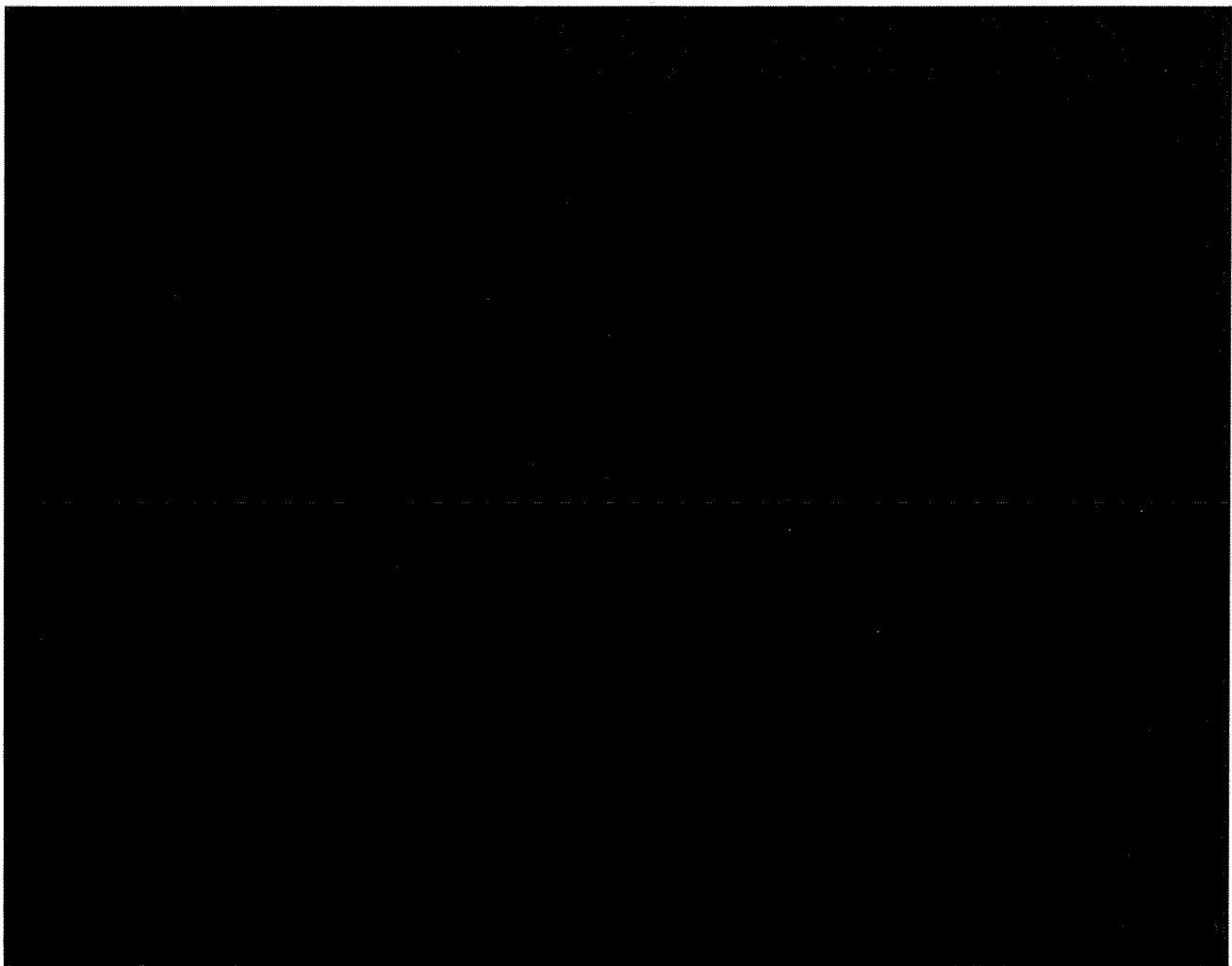
Hi!

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

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, Esophagoscopy, 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.docx; 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]



RECEIVED FROM ELECTRONICALLY FILED - 20210914 11:07 AM - CHARLESTON, SC - COMMISSIONER'S OFFICE - 20210914 11:07 AM

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
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

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.doc; Day-scalp resection.doc; day-sentinel node.doc; day-tep.doc; day-thyroid.doc; day-tonsil.doc; day-trach.doc; Vandergrift - crani with ENT.doc; day - orbital fx .doc; day-bone debridement.doc; day-CARDS procedure.doc; day-carotid resection.doc; day-check resection.doc; day-debridement of mandible.doc; day-ees.doc



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

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 <adaia@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

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. 2021-CP100-5289

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.)

_____)

ATTACHMENT 7—
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 7

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,)

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. _____

EXHIBIT 7
TO MASTER EXHIBITS

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
muscedu

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.

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 8—
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 9

ELIECIRKONNICALITY/FILED - 20220210 10:44:11 PM - CHARLESTON - COMMUNICATIONS - CASE#202103110032889

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

EEJECTRCONICQALITY/FILEED--220222MAY 225 10:14:11PM--CHARRLESSTON--COMMUNION/PLEANS--CNSHH#22021CPT10032839

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.

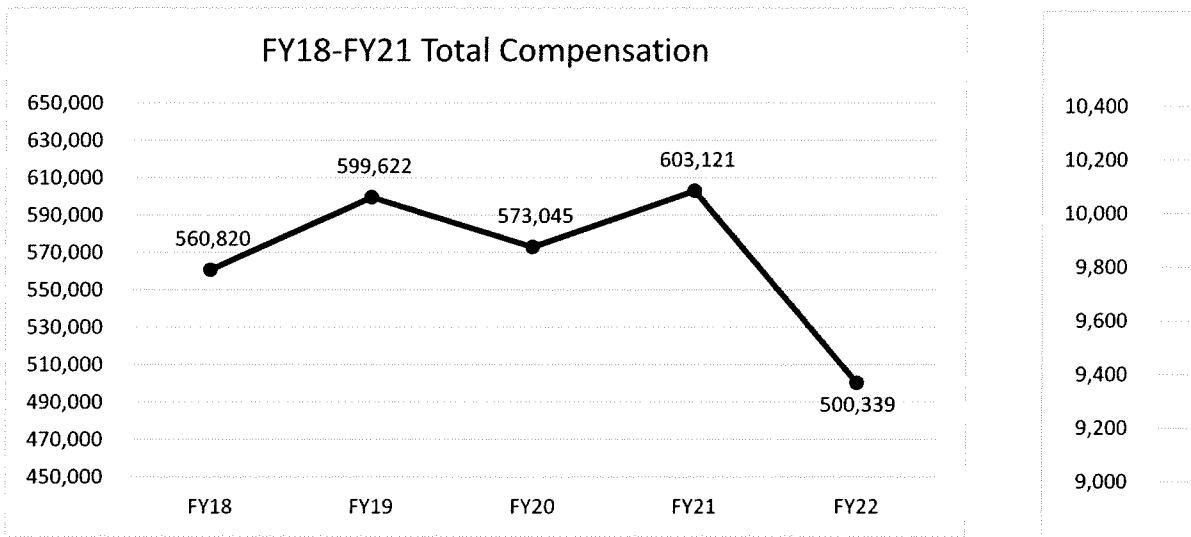
If my RVUs keep going up and my salary is lower than prior years, this is not a viable option for me

Thanks

Terry

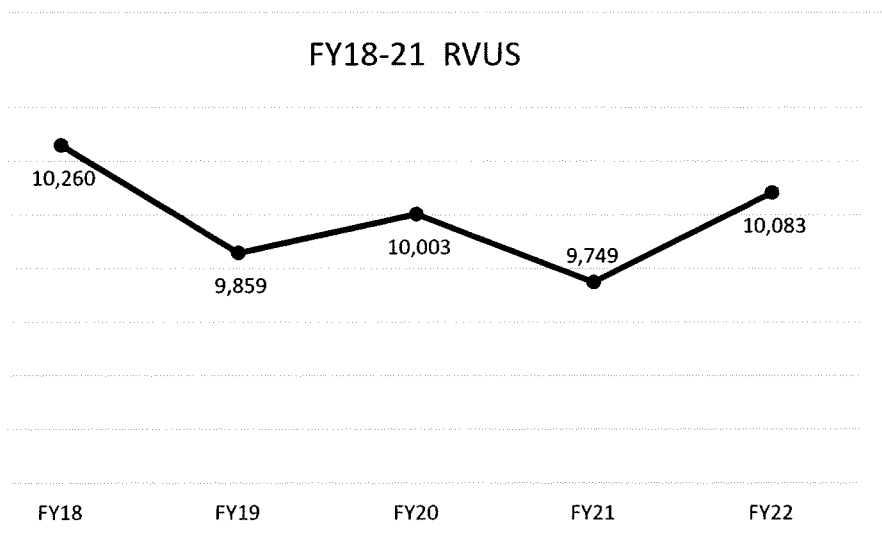
	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
							+\$100k - HCC	+\$100k - HCC
Day, Terry								
MUSC	61,800	63,654	63,654	64,927	64,928	67,037	67,037	67,037
UMA	307,200	315,346	324,806	331,306	331,306	341,084	441,084	445,084
Incentive	101,600	102,885	70,712	71,048	80,172	85,893	52,699	87,501
Total:	470,600	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							10,260	9,859
% from prev year								-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



FY20	FY21	FY22
	Incentive as listed on contract . Not actual	HCC \$ ends
+\$100k - HCC		
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%

FY18-21 RVUS



Service Code	All
Patient Name	All

UHC Work RVUs	Column Labels				FY21 annualized
Row Labels	2018	2019	2020	2021	Grand Total
DAY, TERENCE A.					
OTOLARYNGOLOGY	10,259.73	9,858.60	10,002.73	8,937.06	39,058.12
GRABOYES, EVAN MICHAEL					
OTOLARYNGOLOGY	4,364.09	4,238.91	5,136.00	4,466.14	18,205.14
HORNIG, JOSHUA D.					
OTOLARYNGOLOGY	9,320.43	10,477.22	8,981.98	9,784.67	38,564.30
LENTSCH, ERIC J					
OTOLARYNGOLOGY	12,724.25	13,945.54	11,780.83	9,791.69	48,242.31
Grand Total	36,668.50	38,520.27	35,901.54	32,979.56	144,069.87

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 9—
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 10

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 10 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 14

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,)

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. _____

EXHIBIT 14

TO MASTER EXHIBITS

To: Thies, Paula (thiespa@musc.edu)[thiespa@musc.edu]
From: Davis, Betsy Kay[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D1ACAA416FC44FEB7AE7CD92181C7C3-DAVISB]
Sent: Tue 3/16/2021 9:15:39 AM (UTC-04:00)
Subject: question

Paula,

I help residents throughout the country with their contracts. You graciously shared the table so I can guide them in the right direction with respect to pay. I have a new topic to ask you about.

What about a non compete clause. I thought that I was not subject to a non compete clause. Do you know the status of when stand with a noncompete? How can I find out?

Thanks, betsy

Betsy K. Davis, DMD, MS
Wendy and Keith Wellin Endowed Chair in Maxillofacial Prosthodontics and Dental Oncology
Director, Maxillofacial Prosthodontic Clinic
Professor, Department of Otolaryngology/H&N Surgery
Medical University of South Carolina
135 Rutledge Avenue, MSC 550
Charleston SC 29425



If you have received this communication in error, please notify the MUSC Compliance Office immediately at (843) 792-4037 or 800-296-0269. Thank you.

The documents accompanying this email 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.

843-876-1001 Clinic
843-876-1098 FAX

DELIVERED FROM CALIBRE MAILBOX - 2021/03/16/09:15:39 AM - CHAIR/RECEIVED - COM/WWW/COM/PR/LEAS - C/MS/2021/03/16/09:15:39 AM

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. 2021-CP100-5289

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.)
_____)

ATTACHMENT 11 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

MASTER EXHIBIT 15

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,)

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. _____

EXHIBIT 15

TO MASTER EXHIBITS

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. 2021-CP100-5289

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.)

ATTACHMENT 12 –
TO PLAINTIFFS’ MOTION TO SUPERSEDE
PRIOR ORDERS DENYING PLAINTIFFS
INJUNCTIVE RELIEF AND TO GRANT
TEMPORARY INJUNCTION DURING PENDENCY
OF APPEAL

AFFIDAVIT OF TIMOTHY BRENDLE

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,)

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 BRENDEL

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

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

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

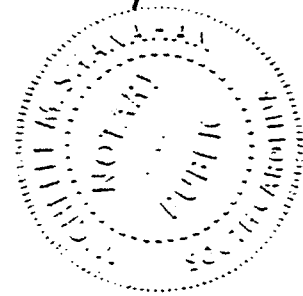
6. Access to the procedure cards and instrument lists are restricted access for only certain MUSC employees and they are not accessible by the public.

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.


Notary Public for S.C.


Print Name

My Commission Expires: 6/10/2026

RECEIVED
Apr 14 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-000352

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

CERTIFICATE OF COUNSEL

The undersigned certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 17, 2023

s/ James K. Gilliam
James K. Gilliam, Esquire, SC Bar #76695
BURR & FORMAN LLP
104 South Main Street, Suite 700
Greenville, South Carolina 29601
(864) 271-4940 Telephone
jgilliam@burr.com

Celeste T. Jones, Esquire, SC Bar #3173

ctjones@burr.com

Robert L. Widener, Esquire, SC Bar # 6089

rwidener@burr.com

BURR & FORMAN LLP

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799.9800 Telephone

ATTORNEYS FOR APPELLANTS