

nurses through outside agencies. Per the language of the contract, these nurses are not employees of the University. Exhibit A is a true and accurate copy of this contract.

5. OHA Solutions utilizes an automated system called “Shiftwise” to facilitate the placement of nurses and to streamline the process through which agency nurses are placed.

6. Participating hospitals post queries on Shiftwise for staffing needs, which employment agencies can access. If an employment agency has a nurse who is qualified for the posted position, it may then forward that candidate’s resume for consideration by the hospital.

7. Carrie Aurin, RN, is the Nurse Manager in the Blood and Marrow Transplant Unit at OSUMC. Her responsibilities include assessing the need for agency nursing personnel, and then reporting any such needs to the director of nursing and the CEO.

8. In April of 2012, Ms. Aurin identified a need for an agency nurse on the Blood and Marrow Transplant Unit at the OSUMC. After gaining the necessary approval, she submitted a query for candidates on the Shiftwise system to fill a thirteen week commitment.

9. Medical Staffing Options responded to the query by submitting the resume of Paul Gullett, RN.

10. Mr. Gullett was one of several candidates selected by Ms. Aurin for an interview, and he was ultimately chosen by her to fill the position. Prior to the assignment, Ms. Aurin discussed her staffing needs with Mr. Gullett to determine his availability.

11. A contract was executed between Medical Staffing Options, Inc. and Paul Gullett for the placement of Mr. Gullett at OSUMC for a period of 13 weeks. Exhibit E is a true and accurate copy of this contract.

12. Neither Paul Gullett nor MSO were in privity of contract with OSUMC.

13. Mr. Gullett was required to undergo a week of classroom orientation at OSUMC where he was taught OSUMC policies and procedures, including how to perform clinical procedures. He was also trained on how to obtain computer access to all OSUMC policies and procedures. The details of this orientation are set forth in Exhibit F, the OSUMC - Division of Nursing – Orientation Record.

14. Included in OSUMC policies and procedures is a clinical procedure for the proper removal of a central line, which is the procedure at issue in the instant litigation. Exhibit H is a true and accurate copy of this policy.

15. While working on the Blood and Marrow Transplant Unit, Mr. Gullett was expected to follow all OSUMC policies and procedures.

16. The orientation agency nurses go through at OSUMC is different than the orientations for an OSUMC staff nurse. Agency nurses on the Blood and Marrow Transplant Unit go through one week of nursing education, including reviewing OSUMC policies and procedures, as well as two weeks of on the job preceptor training. During this orientation period, the agency nurse's assignment can be terminated if the preceptor gives an unsatisfactory evaluation. An OSUMC staff nurse goes through a longer orientation that can last 12-16 weeks. If an agency nurse wants to be hired permanently at OSUMC, he must go through the entire application process, including being interviewed again. If he is hired by OSUMC, even if went through an agency nurse orientation, he must still go through the university employee orientation.

17. During Mr. Gullett's preceptorship, multiple OSUMC nurses oversaw his patient care, providing him with instruction and guidance and confirming he was able to fulfill the duties of a nurse on the Blood and Marrow Transplant Unit. The preceptor initialed and signed Exhibit F,

the OSUMC – Division of Nursing Agency RN Orientation Record confirming completion of the preceptorship.

18. Once Mr. Gullett assumed full clinical responsibilities, he was expected to perform his duties just like a permanent OSUMC nurse. Before each shift, Mr. Gullett was instructed to report to the specific unit's nurse manager. In Mr. Gullett's case, he reported to nurse manager, Carrie Aurin. While Ms. Aurin did schedule Mr. Gullett for specific shifts, he still had the opportunity to request that he not be assigned certain dates or shifts. OSUMC staff nurses also had the ability to request leave on certain dates and shifts. While Ms. Aurin can mandate that OSUMC staff nurses work overtime shifts pursuant to the nurses' collective bargaining agreement, because agency nurses are not a part of the union, Ms. Aurin could ask, but could not require, that Mr. Gullett work overtime shifts. Mr. Gullett's hours, however, were scheduled by Ms. Aurin. He also received daily patient assignments from the OSUMC charge nurse, he wore an OSUMC nurse uniform, he was issued an Ohio State Medical Center identification badge, he was given an identification number that allowed him to access, modify and create patient records, and he was given an identification number that enabled him to obtain medications from the OSUMC pharmacy and administer them to patients.

19. Mr. Gullett entered his time into Shiftwise for review by an **OSUMC** nurse manager. Once his time was approved, it was sent to the OSUMC accounting department for payment. Payment was then issued by OSUMC to an escrow account at US Bank, based on his hourly rate. An escrow agent then paid Medical Staffing Options, Inc. and an administrative fee to OHA Solutions. Medical Staffing Options, Inc. paid Mr. Gullett.

20. Once Mr. Gullett's thirteen week term was completed, OSUMC exercised its right to extend his term on two consecutive occasions.

21. During Mr. Gullett's term at OSUMC his performance was evaluated by Ms. Aurin, the nurse manager on the unit.
22. At no point during his assignment at OSUMC did Medical Staffing Options Inc. provide Mr. Gullett with direction, oversight or training regarding his clinical duties or at OSUMC.
23. OSUMC has its own policy regarding agency personnel. It states that "[t]he agency nursing personnel are not employed by the OSU Health System." (Joint Exhibit I, p. 1). According to OSUMC policy, "Agency resources are used to supplement staffing when no other means of providing adequate staff are available." (Joint Exhibit I, p. 1). It further states that, "All agency personnel are expected to assume patient care responsibilities in accordance with all OSUMC and Division of Nursing Policies/Procedures/Protocols." (Joint Exhibit I, p. 1).
24. "An agency nurse shall not be assigned leadership or charge nurse responsibilities, unless the agency nurse has had the appropriate charge nurse experience at the Hospitals." (Exhibit P, p. 11). Regardless of this policy in the union contract, it is Ms. Aurin's practice to not allow agency nurses to be in charge of her unit because she does not allow agency nurses to perform all levels of care on her unit. Ms. Aurin testified that agency nurses are not trained in providing chemotherapy to transplant patients.
25. The President of MSO, Robert Gammill, testified that his company paid Mr. Gullett for his services at OSUMC, and was responsible for any withholding of payroll taxes, and paying any workers compensation insurance and unemployment compensation. As part of MSO's agreement with OHA Solutions, Mr. Gammill signed an affidavit testifying to these facts as well. (Joint Exhibit S).
26. OSUMC did not provide Mr. Gullett with a W-2 or a 1099 form for tax purposes. OSUMC did not provide benefits, including health insurance, life insurance, retirement benefits.

OSUMC did not provide professional malpractice insurance for Mr. Gullett. OSUMC does not provide agency nurses with paid leave for illness, holidays, or vacation.

27. During his assignment at OSUMC, Mr. Gullett wore an OSUMC identification badge, but his badge was different than an OSUMC staff nurse's badge, because it was blue instead of red, had the title "R.N. Traveler" on it, and also had an expiration date on the front of his badge. (Joint Exhibit Q). **The badge bears the same Ohio State University Medical Center logo as appears on all OSUMC nursing identification badges.**

28. Agency nurses who are assigned at OSUMC are not members of the union and cannot avail themselves of many of the provisions provided in the collective bargaining agreement. (Joint Exhibit P). Agency nurses do not pay union dues, nor are they required to pay a fair share. Educational programs, seminars, and conferences are provided to OSUMC staff nurses, but not agency nurses. (Joint Exhibit P, p. 7). The assignment of an agency nurse can be terminated immediately, and the agency nurse has no right to grievance, arbitration, or corrective discipline. (Joint Exhibit P, p. 11). Agency nurses have no rights to the benefits as provided by the union contract.

29. In July 2012, OSUMC had an entirely electronic medical record system. Accordingly, in order for Nurse Gullett to make entries in patient charts he was assigned a User ID number and password for the OSUMC record system. For example, with his User ID, and his password, he was able to make the entry reflected in Joint Exhibit J. This is similar to the system ID and password he was assigned on a different agency assignment he took at a Texas Hospital. Without a User ID and password, it would not be possible for a nurse at an institution with a fully electronic record to perform any nursing duties that required the nurse to make entries in the patient's chart. During his orientation at OSUMC, Nurse Gullett was also given similar

authorization to use the OSUMC Pyxis system to dispense medications to patients. In that documentation he was specifically designated as “RN, Agency/Traveler” as opposed to “RN Staff.” (Joint Exhibit F, p. 23).

30. If the Court concludes that Mr. Gullett is a state employee, which OSUMC denies, it is stipulated that he was acting within the scope of that employment when the cause of action arose.

31. The parties stipulate to the authenticity and admissibility of Exhibits A-V.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

Daniel R. Forsythe per authority

DANIEL R. FORSYTHE (0081391)
KARL W. SCHEDLER (0024224)
Assistant Attorneys General
Court of Claims Defense Section
150 East Gay Street, 18th floor
Columbus, Ohio 43215
(614) 466-7447
COUNSEL FOR DEFENDANT



MICHAEL J. ROURKE (0022950)
ROBERT P. MILLER (0073037)
Rourke & Blumenthal, LLP
495 S. High St., Suite 450
Columbus, Ohio 43215
(614) 220-9200
COUNSEL FOR PLAINTIFFS