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IN THE OHIO COURT OF CLAIMS

**Nathan C. Hall, MD, PhD
1115 Old Post Circle
Garnet Valley, PA 19060**

Plaintiff,

v.

**The Ohio State University
Wexner Medical Center
650 Ackerman Road
Columbus, OH 43218,**

Defendant.

Case No.
Judge

2015-00038

NATURE OF CLAIMS

Now comes Plaintiff Nathan C. Hall, MD, PhD (“Plaintiff” or “Dr. Hall”), by and through the undersigned counsel, and for his Complaint states as follows:

1. This action is brought against Defendant The Ohio State University Wexner Medical Center (“OSU” or the “Wexner Medical Center”), an arm of the State of Ohio, and, should he not be entitled to immunity, Richard D. White, MD (“Dr. White.”), Chairman of the Department of Radiology within OSU’s College of Medicine. The action arises out of:

- a. OSU’s illegal and discriminatory treatment of Dr. Hall based on his age, as well as its retaliation against Dr. Hall for engaging in protected activity under The Age Discrimination in Employment Act (“ADEA”) of 1967, 29 U.S.C. § 621 *et seq.*;
- b. OSU’s and, to the extent that his conduct was outside the scope of his employment or was based upon malice, bad faith, or recklessness, Dr. White’s illegal and discriminatory treatment of Dr. Hall based on his age, in violation of Ohio Revised Code (“R.C.”) § 4112.14(A);

ON COMPUTER

- c. Assuming, *arguendo*, Dr. Hall did not have a contractually protected interest in his position as Division Chief of Nuclear Medicine and Molecular Imaging, OSU's and, to the extent that his conduct was outside the scope of his employment or was based upon malice, bad faith, or recklessness, Dr. White's discharge of Dr. Hall from the Division Chief of Nuclear Medicine and Molecular Imaging position in violation of clear public policy; and
- d. OSU's breach of the July 2011 Physician Employment Agreement (the "2011 Agreement").

2. Dr. Hall alleges claims against OSU to the extent permissible under the Eleventh Amendment to the U.S. Constitution and where the state of Ohio has consented to being sued for damages.

PARTIES

3. Nathan C. Hall, MD, PhD, is a Pennsylvania resident living at 1115 Old Post Circle, Garnet Valley, PA 19060. At all other times material to this Amended Complaint, Dr. Hall resided at 1001 Eckard Road, Centerburg, OH 43011.

4. Dr. Hall served as Division Chief of Nuclear Medicine and Molecular Imaging in OSU's College of Medicine's Department of Radiology (the "Department") from 2006 to 2014. Dr. Hall was a Tenure Track Clinical Science Pathway faculty member throughout his employment in the Department.

5. At all times material to this Complaint, Dr. Hall was over 40 years-old. Dr. Hall was born January 21, 1969. Dr. Hall was 41 when Dr. White became Chairman of the Department of Radiology in 2010. Dr. Hall is currently 45 years-old.

6. At all times material to this Complaint, The Ohio State University Medical Center is a division of the Ohio State University, a federal and state assisted institution of higher education, that operates through its officers and employees. Both OSU and Wexner Medical Center employ more than 20 employees, qualifying each as an “employer” under 42 U.S.C. § 2000e(b) and 29 U.S.C. § 630.

7. At all times material to this Complaint, Dr. White acted as the Chairman of the Department of Radiology in OSU’s College of Medicine. OSU is a state actor and has empowered Dr. White to take administrative action against Dr. Hall under color of state law.

JURISDICTION

8. This action arises under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*; R.C. §§ 4112.14(A); Ohio tort law; and Ohio contract law.

9. Plaintiff dually filed an administrative complaint within the United States Equal Employment Opportunity Commission (“EEOC”) and the Ohio Civil Rights Commission (“OCRC”); however, Plaintiff’s only purpose in filing the administrative complaint was to receive a right to sue letter. Plaintiff had no intention of initiating an administrative investigation. True and accurate copies of Plaintiff’s EEOC/OCRC documents demonstrating this intent are attached as Exhibit A. Plaintiff received a Right to Sue letter from the EEOC on or near October 30, 2014.

10. This Court has jurisdiction over this action by virtue of R.C. 2743.02, wherein the state of Ohio waived its immunity from liability and consented to suit in the Court of Claims. This Court has jurisdiction to determine whether Dr. White is entitled to immunity, as he is a person who was serving an appointed position, and was employed by the state, at the time the

allegations below took place. Dr. White is therefore an “officer or employee” of the state pursuant to R.C. § 109.36.

11. All claims arose in Franklin County where at all times material to this Complaint the Defendants resided and/or committed the acts giving rise to this action.

GENERAL FACTUAL ALLEGATIONS

A. Dr. Hall Arrives at OSU and Meets, if Not Exceeds, Expectations.

12. In 2004, Dr. Hall entered into an agreement with OSU to become an Assistant Professor in the Clinical Science Tenure Track in the Department of Radiology.

13. At that time, and in the six years that followed, the Department’s expectations of Dr. Hall were clear: Dr. Hall was to meet the obligations established in his employment agreement, the Department’s Appointment, Promotion & Tenure (“AP&T”) document, and the College of Medicine’s Policy on Salary Recovery.

14. The AP&T document, in its current form, outlines four career tracks available to faculty members in the Department: Tenure, Clinical, Research, and Auxiliary/Adjunct. The Tenure Track is the only means by which a Radiology faculty member can achieve Tenure status. Faculty members on the Tenure Track are placed either on the Basic Science (usually PhD) or Clinical Science (usually MD) pathway. The “Clinical Science Pathway is specifically designed for clinically trained faculty deployed with $\geq 40\%$ funded release time devoted to competitive national grant-supported research predicated on adequate ongoing extramural self-funding, while $\leq 60\%$ time is spent on clinical, educational, and/or administrative activities.” The probationary period for reaching Tenure status under the Clinical Science Pathway is 11 years. Failure to

achieve Tenure within this time frame may result in the faculty member's discharge from OSU. A true and accurate copy of the AP&T document is attached as Exhibit B.

15. The College of Medicine Policy on Salary Recovery provides additional requirements: Recently hired faculty at the assistant professor level must "recover 25% of their salary within three years, and 50% within 6 years." New tenure track clinical faculty are provided 2 days per week (40% of a faculty member's Full Time Equivalent, or "FTE") for academic/research activities and provide clinical services 3 days per week (60% FTE). They are expected to recover 25% of the academic portion of their salary (10% FTE) within three years, and 50% of the academic portion of their salary (20% FTE) within 6 years. These calculations are based on the NIH salary cap which was at or about \$179,700 during the timeframe in question. A true and accurate copy of the College of Medicine's Policy on Salary Recovery is attached as Exhibit C.

16. From 2004 to 2010, Dr. Hall consistently met and/or exceeded the productivity expectations set forth in his employment agreement, the Department's AP&T document, and the College of Medicine's Policy on Salary Recovery. As a result, Dr. Hall regularly received positive performance evaluations from his superiors in the Department and was promoted to Division Chief of Nuclear Medicine and Molecular Imaging in 2006. Dr. Hall received a second promotion, to Associate Professor, in the summer of 2011, wherein he was also granted tenure based on his academic achievements and national visibility.

17. In July 2011, Dr. Hall then entered into another employment agreement with OSU. Section 1.1 of the 2011 Agreement states: "The Ohio State University hereby employs [Dr. Hall] and [Dr. Hall] hereby accepts employment as a physician with an appointment within the Senior Administrative and Professional staff of the University." The 2011 Agreement provides for a

term from July 1, 2011 through June 30, 2014. Section 3 of the 2011 Agreement provides the terms of Dr. Hall's compensation. Subsection 3.1 provides Dr. Hall's base salary calculation, which consists of a Clinical Services Salary, an Academic Services Salary, and a \$50,000.00 salary as Division Chief of Nuclear Medicine. A true and accurate copy of the 2011 Agreement is attached as Exhibit D.

18. Section 3.2 of the 2011 Agreement guarantees Dr. Hall other benefits, including "up to eight thousand dollars (\$8,000) per fiscal year ... to cover the reasonable costs of [attending Continuing Medical Education events], including fees and travel expenses, subject to the University's travel policies."

19. Section 3.3 of the 2011 Agreement outlines OSU's additional productivity expectations: "[I]t is expected that [Dr. Hall] will be clinically productive for [Dr. Hall's] patient care services, as measured by Work Relative Value Units ("WVRUs") at 5,192 wRVUs annually (433 monthly)...." That section also provides that, in the event Dr. Hall falls short of OSU's wRVU expectations, the Department Chair may, within a 30 day period, "jointly develop a plan to increase [Dr. Hall's] wRVUs." Section 3.3 then provides that, should Dr. Hall again fail to satisfy OSU's productivity requirements, OSU's only remedy is to reduce Dr. Hall's Clinical Services Salary.

20. Under Dr. Hall's leadership, the Department saw drastic improvements as to both the size and quality of the Nuclear Medicine and Molecular Imaging Division. Dr. Hall:

a. Ushered in new technologies (including 4 SPECT/CT scanners) and clinical diagnostic scanning services (including, but not limited to, Amyvid, Datscan, NaF bone scans, FDG viability, and Lymphoseek);

- b. Initiated and developed an ACGME accredited Nuclear Medicine residency program;
- c. Initiated and developed an ACGME accredited Nuclear Radiology fellowship program;
- d. Initiated and developed an advanced hybrid molecular imaging fellowship program;
- e. Developed an in-house PET/CT program—one of the most efficient in the country—which increased the number of studies per year tenfold;
- f. Developed a successful multidisciplinary research program centered on hybrid molecular imaging quantification and intra and perioperative imaging techniques, which has gained international recognition and visibility;
- g. Maintained an average of at least 40% FTE extramural funding—the maximum permitted—over a seven year period;
- h. Published over 50 peer-reviewed scientific papers;
- i. Helped manage the Imaging Core Lab clinical trials associated with the National Institute of Health and National Cancer Institute; and
- j. Held numerous committee positions, including, but not limited to:
 - i. Executive Committee of the American Board of Science and Nuclear Medicine;
 - ii. Co-Director of the Imaging Care Lab for the National Institute of Health and National Cancer Institute; and

iii. Vice Chair of the Imaging Committee for the Alliance for Clinical Trials in Oncology and SWOG of National Cancer Institute.

B. Dr. White's Appointment as Department Chair and the Unclear Expectations that Followed.

21. As mentioned above, in 2010, Dr. White was appointed by the College of Medicine to be the Chair of the Department of Radiology—the position immediately superior to that held by Dr. Hall. Almost immediately, the environment within the Department began to change for the worse.

22. In each of his annual performance evaluations conducted prior to Dr. White's appointment, Dr. Hall was given positive evaluations by previous chairs of the Department. Yet, once Dr. White assumed the position of Department Chair, Dr. Hall never again received a positive review—even when he met the productivity requirements established in the, 2011 Agreement, the Department's AP&T document, and the College of Medicine's Policy on Salary Recovery.

23. Dr. White's appointment as Department Chair ushered in additional arbitrary and unidentifiable (and unattainable) productivity demands for Dr. Hall's position in contravention of his employment agreements, the Department's AP&T document, and the College of Medicine's Policy on Salary Recovery. Despite the fact that Dr. Hall had met the requirements provided in the above mentioned documents and policies, Dr. White consistently criticized Dr. Hall for failing to meet his personal expectations. For a period of approximately two years, these "expectations" remained unclear to Dr. Hall, and would frequently change from conversation to conversation throughout numerous meetings between Dr. White, Dr. Hall, and other members of the Department.

24. Dr. White did have one clear demand: he expected Dr. Hall to bring into the University an amount no less than 100% of the cost of his (Dr. Hall's) salary plus benefits. None of Dr. Hall's employment agreements with OSU required him to recover the total cost of his salary plus benefits, nor did the Department's AP&T document or the College of Medicine's Policy on Salary Recovery. Indeed, Dr. White's sudden arbitrary expectation that Dr. Hall recover the cost of his salary plus benefits directly conflict with the expectations established in the written agreements and policies provided by OSU.

25. In Dr. Hall's 2012 review, Dr. White presented documents which allegedly demonstrated that Dr. Hall did not meet the Department's expectations with regard to clinical productivity. Dr. White claimed that Dr. Hall failed to meet the Department's expectations despite the fact that Dr. Hall produced 77% of the expected contracted Relative Value Units ("RVUs") while also maintaining approximately 40% FTE funding. Had Dr. White reduced Dr. Hall's contracted RVU expectations by the above-mentioned 40%—as he was supposed to do—he would have realized that Dr. Hall was performing at 128% of the Department's clinical productivity expectations. These documents also gave no credit to Dr. Hall for extramural grant funding.

26. Over the course of the next year, and in his 2013 evaluation, Dr. Hall sought to clarify the Department's expectations of him, given the conflict created by the language in the 2011 Agreement, the College of Medicine's Policy on Salary Recovery, the Department's AP&T document, his previous positive evaluations, and Dr. White's additional demand that Dr. Hall recover the total cost of his salary plus benefits. Rather than provide a clear metric by which Dr. Hall could assess his productivity under Dr. White's new regime, Dr. White only reiterated that

Dr. Hall was not meeting the Department's expectations. Meanwhile, Dr. Hall's clinical productivity for the 2013 fiscal year was 60% that of a full time clinical FTE, i.e., exactly what is expected under the departmental guidelines for tenure track clinical faculty. In FY2014, Dr. Hall sought to meet 100% clinical FTE RVU requirements (assuming Dr. Hall's non-tenure track, full time clinical track, productivity expectations) and was on pace to do so at the time of his termination as Division Chief.

27. Despite Dr. White's criticism, from 2007 to 2014, Dr. Hall's funded research ranged anywhere from approximately 25% to approximately 65% of his FTE. From 2008 to 2014, Dr. Hall's funded research exceeded 40% of his FTE, meaning more than 100% of Dr. Hall's academic time during that period was fully funded. The Department only required that 50% of academic time be funded after six years with the Department. At no point from 2007 to 2014 did Dr. Hall's FTE funded research ever fall below the 50% threshold established by the Department.

C. Dr. White Engages in Blatant Age Discrimination and Harassment.

28. In Dr. Hall's June 2013 evaluation, Dr. White made clear that he was asking all Tenure Track faculty members over 40 years-old to consider voluntarily coming off the tenure track to "get ahead" on the clinical track. Despite Dr. Hall's posturing, it was clear to Dr. Hall and others that, for tenure-track faculty over 40, the alternative to not "voluntarily" coming off the tenure track was termination.

29. Dr. White sought to justify this blatant act of age discrimination by stating that the Department could not afford to pay senior faculty, or as he put it, "seasoned veterans," in the manner it had been for nearly a decade. Faculty members under 40 years-old were not given this

treatment. As explained by Dr. White, the Department was more willing to provide financial support to younger faculty members because they are “at a different phase of ... life,” and are the kind of “young bucks” the Department is willing to support. Accordingly, upon information and belief, Dr. White did not require younger faculty members to recover 100% of their salary plus benefits. This unwritten expectation applied only to “seasoned veterans” over forty years old.

30. Dr. White reiterated this improper—and illegal—position on numerous occasions. During a December 6, 2013 meeting, Dr. White again stated that “the only guys [he is] going to support are the guys that are early [in their careers,] just starting out to jumpstart their career.”

31. Dr. White attempted to justify his position as a matter of “career development”—a necessary correlation to age—and cost to the University. Yet Dr. White’s own words demonstrate that discrimination underlies both attempted justifications: “You guys are at different levels of career development. I am willing, for the guys that just arrived to the best of my ability, to jumpstart their careers to a successful track. You’re a seasoned veteran. I have to approach you guys differently.... You guys should be up and running. You can buy freedom but otherwise if the monies are not there I can’t afford the seasoned veterans the same flexibility.” Ironically, Dr. Hall had “bought his freedom” by fully funding 100% of his research time; however, he was not given credit for this purchase.

32. Following Dr. Hall’s 2012 and 2013 evaluations, Dr. Hall repeatedly sought to clarify OSU’s and Dr. White’s expectations, as well as the reasons behind the disproportionate enforcement of Dr. White’s policy that faculty members recover 100% of their salary plus benefits. Yet, for a reason unknown to Dr. Hall, this appeared to frustrate Dr. White. Months of harassment followed. This harassment consisted, in part, of:

a. Dr. White confronting Dr. Hall on numerous occasions, accusing him of circumventing the chain of command and shedding a negative light on the department;

b. Dr. White blaming Dr. Hall for the mistakes of other faculty and staff, over whom Dr. Hall had no authority or responsibility to oversee; including, for example, the nuclear pharmacy, which is not even within the Department. Dr. White failed to produce an organizational chart to support his assertions that Dr. Hall was in any way responsible for these mistakes; and

c. Dr. White urging Dr. Hall to step down from his position as Division Chief to “save himself the embarrassment” of being terminated from the position and accusing him of inappropriate activities in the presence of Dr. Robert Bornstein (“Dr. Bornstein”), Vice Dean for Academic Affairs.

33. Dr. White has engaged in discrimination of this manner before. In *Wilke v. University of Florida*, Case No. 1 D 06-5414 (1st Dist. Ct. App.), Dr. White was accused of conduct similar to that alleged here when he held a leadership position at the University of Florida. In *Wilke*, the parties entered into a settlement agreement.

34. In *Ersoy v. Ohio State University Medical Center*, Dr. White—while at OSU—was again accused of conduct similar to that alleged here. In *Ersoy*, the parties entered into a settlement agreement.

D. Dr. Hall Files a Discrimination and Harassment Complaint Against Dr. White and Dr. White Retaliates.

35. In December 2013, after years of failing to meet Dr. White’s unclear expectations, being forced to recover the cost of his own salary plus benefits (a requirement not applicable to younger faculty members), being given little alternative but to forfeit his Tenure Track position

based solely upon his age, and enduring Dr. White's many subsequent confrontations and accusations, Dr. Hall filed a discrimination and harassment complaint against Dr. White with OSU's Office of Human Resources ("OSU HR").

36. Almost immediately, Dr. White's hostility toward Dr. Hall increased:

a. In February 2014, Dr. Hall sought clarification from Dr. White with respect to faculty pathways in light of Dr. White's decision to ask all faculty members over 40 years-old to remove themselves from the Tenure Track to "get ahead" on the clinical track. Dr. White ignored Dr. Hall's inquiry entirely.

b. In March 2014, Dr. White approached numerous staff and faculty members within the Department to discuss old "allegations" of an inappropriate sexual relationship, in violation of OSU's Sexual Harassment Policy, between Dr. Hall and a female staff member within the Department of Radiology.¹ In 2011—almost three years before Dr. White's questioning—an individual in the Department had filed a complaint with OSU HR, accusing Dr. Hall and the female staff member of having an inappropriate sexual relationship in violation of OSU policy; however, Dr. Hall has never engaged in such a relationship. The 2011 complaint makes no reference to any specific act of impropriety and, revealingly, makes numerous references to what the complainant believed were unfair raises and promotions received by the female staff member. OSU HR did not find that Dr. Hall violated any OSU policy. Yet—three years after this baseless complaint—Dr. White attempted to justify his inquiries by stating that numerous unnamed individuals within the Department had complained about an alleged sexual relationship in violation of OSU policy.

¹ The female staff member's name has been omitted to protect her identity and reputation.

When Dr. Hall approached his colleagues in the Department to ask about their encounters with Dr. White, each stated that it was Dr. White—not the individual—who initiated the conversation regarding the alleged sexual relationship. One colleague even noted Dr. White’s appearance of having a “vendetta” against Dr. Hall.

c. Also in March 2014, Dr. White began to exclude Dr. Hall from meetings which he would otherwise have been entitled, if not required, to attend. On March 4, 2014, Dr. White excluded Dr. Hall from a Department meeting pertaining to Siemens technology and the new James Center Hospital, and instead requested that Dr. Chadwick L. Wright (“Dr. Wright”) attend—a faculty member directly under Dr. Hall’s supervision and one of the individuals previously described by Dr. White as one of the “young bucks” the Department is willing to support. Dr. White informed Dr. Wright that he excluded Dr. Hall from the meeting because Dr. Hall had “dropped the ball in the past,” and because he had a “conflict of interest” given Dr. Hall’s past collaborative efforts with Philips, a Siemens competitor. Dr. White provided no specific instance of when Dr. Hall had “dropped the ball in the past.” Moreover, Dr. Hall had previously worked extensively with Siemens; Dr. White did not have any concern regarding a conflict of interest on that occasion.

d. Again in March 2014, Dr. Hall requested to use Professional Expense Reimbursement Allowance (“PERA”) funds to attend the annual Society of Nuclear Medicine and Molecular Imaging event regarding Computer Assisted Radiology and Surgery (“CARS”). Dr. White denied Dr. Hall the use of PERA funds for the event. Indeed, upon information and belief, Dr. White unilaterally stripped all faculty members of the \$8,000 PERA allowance guaranteed in the Department’s employment contracts and

pooled the funds into an account that he controlled. In the nine years prior, Dr. Hall had never once been denied the use of PERA funds. Meanwhile, Dr. White reimbursed Dr. Wright (a “young buck”) for his expenses related to the same CARS meeting.

37. Finally on April 4, after months of retaliation following Dr. Hall’s filing of a discrimination and harassment complaint with OSU HR, Dr. White terminated Dr. Hall from his position of Division Chief of Nuclear Medicine and Molecular Imaging. Dr. White was provided with no advance written notice of the termination as required by the 2011 Agreement; rather, Dr. White handed Dr. Hall a written notice of his termination during the termination meeting itself. Dr. White cited only two reasons for Dr. Hall’s termination. First, Dr. White stated that Dr. Hall failed to “cast a positive shadow” on OSU, the Department, and his division. Second, Dr. White stated that Dr. Hall underrepresented the Division of Nuclear Medicine and Molecular Imaging and put his own self-interest above the faculty “in ways quite disruptive to departmental function and bothersome to [his] peers.” Once again, Dr. White did not cite any specific conduct warranting Dr. Hall’s termination from the Division Chief position.

38. The bases provided by Dr. White for Dr. Hall’s termination are false and a pretext for retaliation and harassment. First, in the nearly ten years Dr. Hall was employed by OSU, Dr. Hall never failed to “cast a positive shadow” on the Department or the University—if that phrase can even be afforded a definition. Dr. Hall represented OSU with distinction both nationally and internationally. Second, Dr. Hall never underrepresented his division or put his own interests before those of other faculty; to the contrary, Dr. Hall frequently put the interests of faculty members within his division first by asking that Dr. White clarify the expectations of the Department with respect to those faculty members on the Clinical Science Tenure Track. When

pressed for an explanation, the only other reason Dr. White provided in support of Dr. Hall's termination as Division Chief was that Dr. Hall had previously recorded conversations between Dr. Hall and Dr. White and that Dr. Hall had an "outburst" in a section chief leadership meeting. Dr. Hall only ever recorded his interactions with Dr. White after Dr. White began engaging in blatant age discrimination, harassment, and retaliation. Further, while Dr. Hall certainly spoke at the meeting in question, his comments can in no way be reasonably defined as an "outburst."

39. After Dr. Hall was terminated from the Division Chief of Nuclear Medicine and Molecular Imaging position, the Department filled the position with a substantially younger individual, Dr. Mona Natwa, MD, in her early thirties and without a fraction of Dr. Hall's experience and expertise.

E. OSU HR's Internal Investigations Fail to Rectify Dr. White's Blatant Discrimination, Harassment, and Retaliation.

40. In a case report dated March 11, 2014, OSU HR presented its findings with respect to Dr. Hall's initial discrimination and harassment complaint, as well as its findings with respect to a complaint filed the same month by Dr. Hall pertaining to Dr. White's subsequent retaliation. In the course of its investigation, OSU HR interviewed only six individuals: Dr. Hall, Dr. White, Dr. Bornstein, the female staff member accused of being involved in a sexual relationship with Dr. Hall, and two unnamed witnesses from the Department. After such a meager investigation, it should come as no surprise that OSU HR found that its evidence did not substantiate Dr. Hall's discrimination and harassment claim, and that there was insufficient evidence to support his retaliation claim. However, with respect to the latter, OSU HR did note that "Dr. White's prompting of conversation concerning the allegation of an inappropriate relationship between Dr. Hall and [the female in the Department] has the appearance of being inappropriate."

41. Unhappy with OSU's investigation, and unable to continue working in a hostile work environment wherein he was subject to unlawful age discrimination, harassment, and retaliation, Dr. Hall resigned from his position at OSU in August 2014.

FIRST CLAIM FOR RELIEF
(Discrimination and Retaliation in Violation of the ADEA)

42. Plaintiff includes by reference paragraphs 1–41 as if fully incorporated herein.

43. At all times relevant to this Complaint, Dr. Hall was over 40 years-old. He is therefore protected by the provisions of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*

44. The aforesaid actions of OSU and its agents in discriminating against and harassing Dr. Hall, including, but not limited to, creating a hostile work environment, subjecting Dr. Hall to unclear and unfair productivity standards, including a requirement, not contained in any written agreement or policy, that Dr. Hall recover the entirety of his salary plus benefits, omitting Dr. Hall from meetings central to his duties, denying Dr. Hall use of PERA funds, fabricating an investigation into a three year-old complaint of a sexual relationship in violation of OSU's policies, and terminating Dr. Hall's position as Division Chief of Nuclear Medicine and Molecular Imaging were all undertaken to attempt to force Dr. Hall to resign from his position of Division Chief or cease being an employee of OSU altogether, and were undertaken because of Dr. Hall's age and/or because he opposed OSU's illegal acts of age discrimination, all in violation of the ADEA.

45. All of OSU's acts of discrimination and retaliation in violation of the ADEA were willful and intentional.

46. Dr. Hall has satisfied all of the procedural and administrative prerequisites to suit as set forth in 29 U.S.C. §§ 626(d) and 633(b).

47. As a direct and proximate result of the OSU's discrimination and retaliation against Dr. Hall on the basis of his age and opposition to age discrimination, Dr. Hall has suffered severe and substantial damages, including lost earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by the court.

SECOND CLAIM FOR RELIEF
(Age Discrimination in Violation of R.C. § 4112.14(A))

48. Plaintiff includes by reference paragraphs 1–47 as if fully incorporated herein.

49. Dr. Hall, in his early to mid-forties during the relevant time period, was physically capable of performing the duties and responsibilities required under the 2011 Agreement, including acting as the Division Chief of the Division of Nuclear Medicine and Molecular Imaging.

50. OSU and/or Dr. White created an additional unwritten policy that applied disproportionately, if at all, to the “young bucks” in the Department of Radiology. This same policy, to the extent its expectations on salary recovery can be identified, applied in full force to Dr. Hall and other “seasoned veterans” in the Department, all over 40 years-old. By creating a vague policy and enforcing it in this manner, OSU and/or Dr. White created a mechanism through which it and/or he could justify the removal of older faculty members from Tenure Track and other positions. There was no just cause to terminate Dr. Hall from the Division Chief position. The reasons OSU and/or Dr. White provided for Dr. Hall's termination are baseless

and, in reality, Dr. Hall was terminated as a result of OSU's and/or Dr. White's discriminatory enforcement of the unwritten policy that was in contravention of the Department's AP&T document, the College of Medicine's Policy on Salary Recovery, and the 2011 Agreement.

51. OSU and/or Dr. White openly showed favoritism toward "young bucks" in the Department, enforced the policy requiring faculty members to recover 100% of their salary plus benefits disproportionately to the disadvantage of older faculty members, then harassed older faculty members for failing to meet this and other standards. In discriminating against Dr. Hall on the basis of age, OSU and/or Dr. White acted with malicious purpose, in bad faith, and in a wanton or reckless manner.

52. Dr. Hall was replaced as Division Chief of Nuclear Medicine and Molecular Imaging by a substantially younger individual, Dr. Mona Natwa, MD, who, upon information and belief, is in her early thirties.

53. As a direct and proximate result of OSU's and/or Dr. White's discrimination against Dr. Hall on the basis of his age, Dr. Hall has suffered severe and substantial damages, including lost earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by a jury and a court.

THIRD CLAIM FOR RELIEF
(Wrongful Discharge in Violation of Public Policy)

54. Plaintiff includes by reference paragraphs 1-53 as if fully incorporated herein.

55. Assuming *arguendo* that Dr. Hall did not have a contractual right to his position as Division Chief of Nuclear Medicine and Molecular Imaging, OSU and/or Dr. White discharged Dr. Hall from the position in violation of clear public policy.

56. There is a clear public policy disfavoring discrimination in employment on the basis of age. *See* 29 U.S.C. § 621 *et seq.*; R.C. § 4114.14. There is also a clear public policy disfavoring retaliation against an individual for engaging in a protected activity. *See* 29 U.S.C. § 623(d); 42 U.S.C. § 2000e-3(a); R.C. § 4112.02(I).

57. Dr. Hall was terminated both because of his age and his complaint to OSU HR regarding OSU's and/or Dr. White's creation and enforcement of a vague, unrdiscriminatory salary recovery policy. Dr. Hall's termination from his position of Division Chief of Nuclear Medicine and Molecular Imaging therefore related to and jeopardized the public policies stated above. Dr. Hall is also entitled to relief based upon a claim of wrongful discharge in violation of public policy to the extent he has failed to establish an element of any of the claims set forth in this Complaint.

58. Neither OSU nor Dr. White had an overriding business justification for Dr. Hall's termination as Division Chief. Indeed, neither OSU nor Dr. White had an overriding business justification for the creation, much less the discriminatory enforcement, of the policy on salary recovery. As stated above, Dr. White previously referred to Dr. Hall as one of the best, if not the best, division chiefs in the Department. Moreover, even if the policy on salary recovery is a legitimate business justification for Dr. Hall's termination, OSU and/or Dr. White did not rely on the policy as a reason for demoting Dr. Hall. Rather, OSU and/or Dr. White provided baseless justifications pertaining to Dr. Hall's self-interest and alleged failure to "cast a positive shadow" on the Department.

59. As a direct and proximate result of OSU's and/or Dr. White's wrongful discharge in violation of public policy, Dr. Hall has suffered severe and substantial damages, including lost

earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by the court.

FOURTH CLAIM FOR RELIEF
(Breach of Contract)

60. Plaintiff includes by reference paragraphs 1–59 as if fully incorporated herein.

61. On the date of his termination as Division Chief in April 2014, the terms of Dr. Hall's employment with OSU were defined by the July 2011 Physician Employment Agreement.

62. Dr. Hall performed all of the obligations required by the 2011 Agreement. Moreover, Dr. Hall did not engage in any conduct that constitutes a breach or default of the 2011 Agreement's terms.

63. As detailed in paragraphs 17–20, a significant component of Dr. Hall's salary—and OSU's part of the bargain under the 2011 Agreement—was the \$50,000.00 he received annually in exchange for his services as Section Chief of Nuclear Medicine and Molecular Imaging. Per the terms of the 2011 Agreement, if OSU was unsatisfied with Dr. Hall's performance under the Agreement, its only recourse was to coordinate with Dr. Hall to develop a plan for increasing Dr. Hall's productivity. If Dr. Hall somehow failed to meet the terms of any such plan, OSU was only capable of reducing Dr. Hall's Clinical Services Salary. Yet, without any clear metric, plan, or even idea as to how Dr. Hall could possibly meet OSU's expectations, OSU terminated Dr. Hall's position as Division Chief without providing advance written notice as required by the 2011 Agreement. Prior to Dr. Hall's termination as Division Chief, OSU also denied Dr. Hall the ability to recover the reasonable costs of attendance for Continuing Medical Education events.

64. As a direct and proximate result of OSU's breach of contract, Dr. Hall has sustained economic damages in an amount to be determined by the court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nathan C. Hall, MD, PhD respectfully requests that this Court:

A. Declare that OSU has breached the July 2011 Agreement and that it violated the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* and R.C. § 4112.14(A);

B. Award back pay, front pay, and/or any benefits Plaintiff would have enjoyed had OSU not breached the July 2011 Agreement or had it and/or Dr. White not discriminated and retaliated against Dr. Hall on the basis of age;

C. Award Plaintiff liquidated and consequential damages for economic loss he has suffered as a proximate result of OSU's and/or Dr. White's conduct;

D. Award Plaintiff compensation for past and future pecuniary losses resulting from OSU's and/or Dr. White's unlawful conduct and decisions, including compensatory and punitive damages for humiliation, damage to reputation, mental and emotional distress, and pain and suffering that Dr. Hall experienced and endured as a result of OSU's and/or Dr. White's conduct in an amount in to be determined by the Court;

E. Award Plaintiff punitive damages for malicious and reckless conduct against OSU and/or Dr. White in an amount in excess of One Million Dollars;

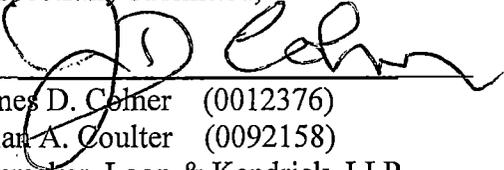
F. Award Plaintiff pre- and post-judgment interest on all sums awarded;

G. Award Plaintiff the costs incurred in this action and reasonable attorneys' fees; and

H. Grant such other legal and equitable relief as is necessary and proper.

Respectfully submitted,

/s/



James D. Colner (0012376)
Brian A. Coulter (0092158)
Shumaker, Loop & Kendrick, LLP
41 South High Street, Suite 2400
Columbus, Ohio 43215
614.463.9441; FAX 614.463.1108
jcolner@slk-law.com
bcoulter@slk-law.com

Colner, James D.

From: Colner, James D.
Sent: Thursday, August 28, 2014 11:03 AM
To: 'JAMES WARREN'
Cc: Glenn Karr (gkarr@karrlaw.com); Nate Hall
Subject: RE: EEOC 530-2014-03229 Hall v. Ohio State University Wexner

Mr. Warren:

Yes, we are requesting a Right to Sue letter from the EEOC. Thank you for your cooperation.

James Colner

From: JAMES WARREN [<mailto:JAMES.WARREN@EEOC.GOV>]
Sent: Thursday, August 28, 2014 10:58 AM
To: Colner, James D.
Subject: EEOC 530-2014-03229 Hall v. Ohio State University Wexner

Good morning Counselor,

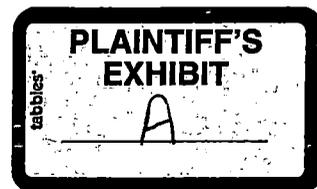
Attached is the draft charge I have prepared per your request. It has been reviewed by Dr. Hall, who has approved it but has not signed it. Per your request, I am sending it to you for review.

To avoid having to go back and forth from our interview room and my office, I will have Dr. Hall call you from the interview room to go over any concerns, if necessary. Also, if you will be requesting the Notice of Rights (To Sue) please do so in writing. You can do so in the response to this e-mail, if that is indeed the intent. Once received, I can submit the charge to be processed accordingly and the NRTS should be issued within the next 30 days or so.

Sincerely,



James R. Warren
Federal Investigator
U.S. Equal Employment Opportunity Commission
Philadelphia District Office
801 Market Street, Suite 1300
Philadelphia, PA 19107
Office: 215-440-2672
Fax: 215-440-2604
james.warren@eEOC.gov



Colner, James D.

From: JAMES WARREN <JAMES.WARREN@EEOC.GOV>
Sent: Thursday, August 28, 2014 10:58 AM
To: Colner, James D.
Subject: EEOC 530-2014-03229 Hall v. Ohio State University Wexner
Attachments: 530-2014-03229 Hall v. Ohio State University Wexner Draft Form 5 Charge 08-28-2014.pdf

Good morning Counselor,

Attached is the draft charge I have prepared per your request. It has been reviewed by Dr. Hall, who has approved it but has not signed it. Per your request, I am sending it to you for review.

To avoid having to go back and forth from our interview room and my office, I will have Dr. Hall call you from the interview room to go over any concerns, if necessary. Also, if you will be requesting the Notice of Rights (To Sue) please do so in writing. You can do so in the response to this e-mail, if that is indeed the intent. Once received, I can submit the charge to be processed accordingly and the NRTS should be issued within the next 30 days or so.

Sincerely,



James R. Warren
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801 Market Street, Suite 1300
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Office: 215-440-2672
Fax: 215-440-2604
james.warren@eEOC.gov

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: _____ Agency(ies) Charge No(s): _____

FEPA
 EEOC

Ohio Civil Rights Commission

and EEOC

State or local Agency, if any

- III. Because of the adverse employment conditions I was subjected to, I developed a disability – which I made Respondent aware of. Because of this, I requested an accommodation of being able to work from home – which I was already doing on occasion as part of my position and job duties. This request was not address by Respondent. On or about April 8, 2014 I began FMLA leave of absence until about mid-July 2014. Upon my return from FMLA leave, I used my remaining sick time until my constructive discharge on or about August 25, 2014.

- IV. I believe I have been discriminated against because of age, in violation of the Age Discrimination in Employment Act of 1967, as amended (ADEA); I believe I have been retaliated against because I filed a complaint of discrimination, in violation of the ADEA. Also, I believe I have been discriminated against because of disability, in violation of Title I of the Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Aug 28, 2014

Date

Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Nathan C. Hall**
1001 Eckard Road
Centerburg, OH 43011

From: **Cleveland Field Office**
EEOC, AJC Fed Bldg
1240 E 9th St, Ste 3001
Cleveland, OH 44199

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

Leona J. Smith,
Acting Intake Supervisor

(216) 522-7515

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Cheryl Mabry-Thomas

Cheryl Mabry-Thomas,
Director

OCT 30 2014

(Date Mailed)

Enclosures(s)

CC: **Kim Shumate**
Interim Chief Human Resources Officer
OHIO STATE UNIVERSITY WEXNER MEDICAL CENTER
410 West 10th Ave
Columbus, OH 43211

James Colner, Esq.
The Huntington Center, Suite 2400
41 South High St.
Columbus, OH 43215



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland Field Office

AJC Federal Building
1240 East Ninth Street, Suite 3001
Cleveland, OH 44199
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Cleveland Status Line: (866) 408-8075
Cleveland Direct Dial: (216) 522-7416
TTY (216) 522-8441
FAX (216) 522-7395

October 16, 2014

Dr. Nathan C. Hall
1001 Eckard Road
Centerburg, Ohio 43011

RE: Nathan C. Hall V. Ohio State University Wexner Medical Center
EEOC Charge # 1550 - - -

Dear Dr. Hall:

This is to acknowledge your charge of employment discrimination against the above named Respondent. The information you have provided indicates that your charge is subject to **the Age Discrimination in Employment Act of 1967, as amended (ADEA) and Title I of the Americans with Disabilities Act of 1990, as amended (ADA).**

A copy of your charge will be provided to the respondent as required by our procedures. The commission's regulations require that you notify this office of any change in address and keep us informed of any prolonged absence from your current address. Your failure to cooperate in this matter may lead to dismissal of your charge.

You need do nothing further at this time. **I am not the investigator assigned to this case.** The assigned investigator/mediator will contact you when he/she needs further information or assistance.

Sincerely,
Joann Wells
Joann Wells
Investigator Assistant

J.C.: James D. Colner, Attorney
Shumaker, Loop & Kendrick, LLP
Borard Certified Civil Trial Advocate
Huntington Center, Suite 2400
41 South High Street
Columbus, Ohio 43215-6104

Enclosure:
Copy of Charge
What you need to know

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

Ohio Civil Rights Commission

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Dr. Nathan C. Hall

Home Phone (Incl. Area Code)

(614) 282-5250

Date of Birth

01-21-1969

Street Address

City, State and ZIP Code

1001 Eckard Road, Centerburg, OH 43011

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

OHIO STATE UNIVERSITY WEXNER MEDICAL CENTER

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(614) 293-8000

Street Address

City, State and ZIP Code

410 West 10th Ave, Columbus, OH 43211

Name

EEOC
 CLDC UNIT

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

OCT 09 2014

RECEIVED

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY GENETIC INFORMATION
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

04-04-2014

08-25-2014

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

- I. I was employed as a Tenured Associate Professor of Radiology. At the time of the discriminatory acts, I was 45 yrs of age; I had a disability, which Respondent was aware of.
- II. In December 2013, I filed a complaint of age discrimination with human resources. I received the results of the investigation in or about March 2014, but I began experiencing retaliation from Dr. Richard White prior to the conclusion of the investigation of the discrimination. A significant part of the retaliation included, but was not limited to, being demoted. I, along with other Associate Professors over the age of 40, was asked to voluntarily relinquish tenure in order to invest resources to the "young bucks" – faculty and/or staff under the age of 40, who have less experience and/or less qualified than I. I have reported my allegation to Respondent's HR, to no avail. On or about April 4, 2014 during a meeting, I received a letter of demotion – which significantly affected my salary and/or my academic career.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Aug 28, 2014

Date

Nathan C. Hall

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
 SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

RECEIVED
 4 AUG 28 AM 10:10
 EEOC PHILADELPHIA
 DISTRICT OFFICE

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: _____ Agency(ies) Charge No(s): _____

FEPA
 EEOC

Ohio Civil Rights Commission

and EEOC

State or local Agency, if any

- III. Because of the adverse employment conditions I was subjected to, I developed a disability – which I made Respondent aware of. Because of this, I requested an accommodation of being able to work from home – which I was already doing on occasion as part of my position and job duties. This request was not address by Respondent. On or about April 8, 2014 I began FMLA leave of absence until about mid-July 2014. Upon my return from FMLA leave, I used my remaining sick time until my constructive discharge on or about August 25, 2014.
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RECEIVED
14 AUG 28 AM 11:10
EEOC PHILADELPHIA
DISTRICT OFFICE

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Aug 28, 2014

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)



WHAT YOU SHOULD DO AFTER YOU HAVE FILED A CHARGE WITH EEOC

➤ **KEEP YOUR DOCUMENTS – BOTH PAPER AND ELECTRONIC**

Now that you have filed an EEOC charge, you must keep anything that might be evidence related to your charge. This includes *all* documents, communications, and electronic information that are potentially related to your EEOC charge, including the harm caused by the discrimination, and all records of your communications with the EEOC. Even if you are not sure whether the information is relevant to your discrimination claim, please do not throw it away or delete it.

➤ **WHAT INFORMATION MUST YOU KEEP?**

- **Paper documents, such as:**
 - Employee manuals, pay stubs, work schedules
 - Letters, memos, your notes
 - Pictures, drawings, charts, whether or not they contain words
- **Electronic information, such as:**
 - E-mails, text messages, tweets, and social media posts and pictures
 - Voice messages, video and sound recordings
 - Word processing documents, electronic calendar entries
- **Electronic memory on devices or the devices themselves, such as:**
 - Memory on computers, laptops, tablets, cell phones
 - Computers, laptops, tablets, cell phones
 - Do not delete, replace, alter, “wipe,” or “clear” your computer hard drive, electronic tablet, or cell phone, and do not change or remove Internet posts, without retaining an electronic copy. If you dispose of any old computers, phones or devices, make sure you make and keep an electronic copy of all potentially relevant information on the device.
- These are some examples and not a complete list.
- If you have questions about what you should or should not do, please contact your investigator.

Why must you keep this information? It might be evidence related to your charge. We are required by the courts to ensure that all potentially relevant information is retained. **Please note that failure to keep these records may cause you to lose your case, or to lose the right to recover money lost due to the discrimination.**

What happens to your information? Your investigator will discuss with you what information is needed by the EEOC to investigate your charge. Information that you provide that happens to be private or personal in nature will not be disclosed by the EEOC during its investigation, and if the EEOC files suit on your charge, we will do our best to keep such information out of the court proceedings.

Please see page 2 for additional important information.

➤ **LOOK FOR WORK IF YOU ARE OUT OF WORK**

If you lost your job or were not hired due to discrimination, you may be entitled to the pay or wages you lost. However, you cannot receive lost wages unless you can show that you looked for another job to replace the one you lost or were denied due to discrimination. In order to prove you searched for work, you must keep copies of all letters, emails, or other evidence of your job search. If you succeed in finding a new job but it pays less than the job you lost, you may be entitled to the difference in pay. Therefore, it is necessary to keep all evidence of your job search even if you find another job.

In addition to looking for work, you should keep good records of your job search so you can prove that you have tried to find a comparable job. If you are out of work because of discrimination, be sure to save *all* documents and communications, including e-mails, relating to your job search.

➤ **WHAT ARE RECORDS OF YOUR JOB SEARCH?**

The following types of information can prove that you have tried to find work:

- copies of job applications and resumes
- a list of all the companies you contact about jobs by phone, letter or in-person
- copies of e-mails or letters that you send to or receive from companies where you have asked about work or submitted an application
- a list all of the places where you apply and for each one,
 - a. the date of the application;
 - b. the position you were seeking;
 - c. the response you received from your application, such as rejection letters or invitations to interview;
 - d. whether you were interviewed and the date of the interview;
 - e. the results of the interview;
 - f. whether you turned down a job offer, and if you did, why
- notes about what you did to look for work (for example, searching the newspaper or Internet or contacting employment agencies) and the dates that you conduct the search
- copies of your pay stubs or earnings records if you find another job.

If you have questions about what you are required to do, please contact your investigator.

➤ **KEEP US INFORMED**

Once you file a charge with the EEOC, you must tell us if you move or get a new address, telephone number, or e-mail address. We may need to talk to you to get more information. If the EEOC cannot reach you to get necessary information, your charge may be dismissed.

➤ **CALL IF YOU HAVE QUESTIONS**

Your investigator will discuss with you the documents and other evidence we need to investigate your charge. If you have any questions, or for inquiries about the status of your case, please contact your investigator directly or call 1-800-669-4000.

Executive Summary of the 2012 Department of Radiology AP&T Process (7/29/12)

Introduction:

The new Department of Radiology Appointment, Promotion & Tenure (AP&T) document is a department-specific adaptation of the new 2012 OSU College of Medicine (COM) AP&T document which redefines academic Tracks, Pathways, and Ranks. With official approval, the new Department AP&T document will translate the COM guidelines for the AP&T process into academic Radiology/imaging science-centric guidelines (subject to future revision and updating under the direction of the OSUCOM).

Background:

In order to advance the OSUCOM to one of the nation's top-tier medical schools, both excellence within, as well as synergy between, the faculty members focusing on patient care, clinical sciences, basic sciences, medical education, or health administration are of paramount importance. The advancement of the OSUCOM also depends on the successful recruitment and retention of outstanding clinicians, clinical scientists, basic scientists, medical educators, and physician-administrators.

Nationally/internationally known clinical scientists are frequently engaged in substantial clinical service and have limited protected research time and resources available to them; this is particularly true in the field of Radiology. A recent informal survey of top-tier academic Departments of Radiology in the nation revealed that most provide their clinical scientists with the option for pursuit of Tenure, without prerequisite NIH-based funding [Appendix 1]. Therefore, a **Clinical Science Pathway**, along with the more standard **Basic Science Pathway**, is incorporated into the Tenure Track described in the Department of Radiology AP&T document.

The primary goal in developing the Department AP&T document is to define the AP&T process for the Radiology faculty in terms of objective quantitative metrics and qualitative measurements tailored to the field of academic Radiology/imaging sciences. As established in the 2012 OSUCOM AP&T document, there are 4 different Tracks leading to a total of 7 specific Pathways, by which 4 different academic Ranks can be potentially achieved by Radiology faculty members as they develop their academic careers in the OSUCOM. The Ranks found in each Pathway are as follows: *Professor, Associate Professor, Assistant Professor, and Instructor*.

Tracks available to meet the needs of both the faculty and Department are as follows: Tenure, Clinical, Research, and Auxiliary/Adjunct. In the Tenure Track, there is a **Basic Science Pathway** and a **Clinical Science Pathway**, as previously mentioned. The Clinical Track contains a **Clinical Scholar Pathway**, a **Clinical Educator Pathway**, and a **Clinical Excellence Pathway**. The Research Track leads into only a **Research Pathway**. Similarly, the Auxiliary/Adjunct Track leads into only an **Auxiliary/Adjunct Pathway**. Regardless of Track or Tenure status, national or international recognition (depending on Rank) is required for either initial appointment or promotion to *Associate Professor* or *Professor*. A brief description of each Track and Pathway follows:

- 1) Tenure Track: The Tenure Track is the only means by which a Radiology faculty member can achieve Tenure status. As previously described, it contains 2 Pathways: the **Basic Science** and **Clinical Science**. The **Basic Science Pathway** is specifically designed for faculty members who emphasize research and



scholarship and it requires NIH funding; both teaching excellence and outstanding service to OSU are also expected. The **Clinical Science Pathway** is specifically designed for clinically trained faculty deployed with $\geq 40\%$ funded release time devoted to competitive national grant-supported research predicated on adequate ongoing extramural self-funding, while $\leq 60\%$ time is spent on clinical, educational, and/or administrative activities. There are probationary periods for reaching Tenure status as follows: 6 years (potentially extended to 9 years) for the **Basic Science Pathway** and 11 Years for the **Clinical Science Pathway**; failure of the faculty member to achieve Tenure after the probationary period introduces the possibility of their being discharged from OSU. Evidence of research and scholarship potential (e.g. research publications or funding) is required for the initial appointment of an **Assistant Professor** or **Associate Professor** to the Tenure Track in either the **Basic Science Pathway** or **Clinical Science Pathway**.

- 2) **Clinical Track:** The Clinical Track is designed for faculty with a primary focus on clinical service. It is subdivided into 3 Pathways: **Clinical Scholar**, **Clinical Educator**, and **Clinical Excellence**, as previously mentioned. The **Clinical Scholar Pathway** is specifically designed to recognize an associated balance of professional accomplishments favoring research/scholarly activities, while the **Clinical Educator Pathway** is specifically designed to recognize a balance of accomplishments favoring formal education/training activities. The **Clinical Excellence Pathway** is specifically designed for faculty devoting $\geq 90\%$ time to high-quality clinical service (includes administrative time directly related to clinical service).
- 3) **Research Track:** The Research Track is designed for faculty members almost totally devoted to specific lines of self-funded NIH-supported research, with no associated clinical or teaching service requirements.
- 4) **Auxiliary/Adjunct Track:** The Auxiliary Track is designed for faculty members serving OSU with $< 50\%$ appointments, focusing on either clinical care responsibilities (Auxiliary) or non-clinical (e.g. scholarship, administrative) responsibilities (Adjunct).

Guidelines for the Department of Radiology AP&T Process:

Overview: The primary parameter used for recommendation of initial appointment, promotion, and/or Tenure status change at OSU is contribution impact, measured by degrees of positive influence on professional peers. The guidelines for the Department of Radiology AP&T process were developed according to the specific scope of practices, expertise, and needs pertinent to the missions of academic Radiology/imaging sciences. The Department AP&T document is designed to delineate and facilitate application of metrics for quantifying research/scholarly accomplishments and measuring national/international recognition of a faculty member.

Assessment of Qualifications for Appointment, Promotion, or Tenure Status Change: The qualifications of each person being considered for initial faculty appointment, academic promotion, or eligibility for Tenure by means of the Department of Radiology AP&T process are evaluated by the Department AP&T Committee. They are assessed according to the overall accomplishments of the individual relative to the 3 academic missions of OSUCOM: service (e.g. clinical care, administration), research/scholarly achievement, and education/teaching. Excellence in only one mission is not sufficient for advancement to the positions of **Associate Professor** or **Professor**, regardless of Tenure status. The evaluation of achievement is primarily based on 2 scales: the

Department AP&T Research Publication/Funding Metrics, which identifies milestones in both scientific publication and extramural funding, and the Department National/International Recognition Index.

Department AP&T Research Publication/Funding Metrics [Table 1]:

Scientific Publication: Achievement in scientific publication is judged on a combination of the following: total number of peer-reviewed manuscripts; Impact Factor (IF) of journal, and H Index (HI) which incorporates the number of citations. Reaching the thresholds for required numbers of peer-reviewed publications according to **Pathway and Rank** are prerequisites, yet alone insufficient for advancement, justifying utilization of IF and HI. Publishing in leading journals pertaining to general academic Radiology/imaging sciences, subspecialty academic Radiology/imaging sciences, or specific imaging modalities/technologies is strongly recommended. IF for representative leading journals range from 1.2 to 7.0 [Appendix 2]; consequently, a minimal IF of 1.2 for crediting a publication has been established. Added use of HI, permits an IF=1.2 publication with evidence of many citations to be considered as meritorious as a high-IF publication with few citations.

Extramural Funding: Recognized sources of extramural funding include NIH grants, Competitive National Grants (CNG), approved patents generating income (amount not currently established by OSUCOM), or any established lines of extramural funding \geq \$200,000. NIH funding is the only type of research grant credited as extramural funding for advancement in either the **Tenure Track-Basic Science Pathway** or the **Research Track/Pathway**. Examples of CNG include (but are not limited to) grants from the: NSF, DOD, CMS, AHRQ, State of Ohio, American Heart Association, American Cancer Association, American Diabetes Association, Susan G. Komen for the Cure Foundation, etc. Patents not generating income will be considered to be equivalent to a single high-IF peer-reviewed publication.

Department National/International Recognition Index [Table 2]:

Regardless of **Track** and Tenure status, promotion from **Assistant Professor to Associate Professor** must be supported by evidence of a strong professional reputation at the national level by means consistent with (but not limited to) the items listed in the Department National/International Recognition Index. For promotion from **Associate Professor to Professor** in any **Track**, the candidate must have achieved greater professional impact with evidence of national-leadership or international recognition.

Recommendations from the Department of Radiology AP&T Committee:

For each portfolio under consideration, the Department of Radiology AP&T Committee will apply the 2 aforementioned scales - the Department AP&T Research Publication/Funding Metrics and the Department National/International Recognition Index – in order to judge academic accomplishments of the faculty member. After factoring in overall achievement (including areas not sufficiently defined herein), a recommendation to the Chairman, Department of Radiology will be made either in favor, or not in favor, of the individual's candidacy for the requested initial appointment, promotion, and/or change in Tenure status.

Track	Rank	Thresholds for New Accomplishments Since Previous Academic Appointment			Comments
		Additional Required Manuscripts with Impact Factor ≥ 1.2 and	H Index	Additional Required Research Funding and Programmatic Development	
Tenure: Pathways	<u>Basic Science:</u> <i>Assoc Prof</i>	≥ 15 (since <i>Assist Prof</i>)	≥ 16	P-I on New R01	
	<u>Basic Science:</u> <i>Tenured Assoc Prof</i>	≥ 25 (since <i>Assist Prof</i>)	≥ 20	P-I on Renewed R01 <u>or</u> P-I on Additional R01	
	<u>Basic Science:</u> <i>Tenured Prof</i>	≥ 25 (since <i>Tenured Assoc Prof</i>)	≥ 20	P-I on Renewed R01 <u>and</u> P-I on Additional R01	
	<u>Clinical Science:</u> <i>Assoc Prof</i>	≥ 15 (since <i>Assist Prof</i>)	≥ 16	P-I on New CNG	CNG = Competitive National Grant
	<u>Clinical Science:</u> <i>Tenured Assoc Prof</i>	≥ 25 (since <i>Assist Prof</i>)	≥ 20	P-I on Renewed CNG <u>or</u> P-I on Additional CNG <u>or</u> Co-I on New R01	
	<u>Clinical Science:</u> <i>Tenured Prof</i>	≥ 25 (since <i>Tenured Assoc Prof</i>)	≥ 20	P-I on Renewed CNG <u>or</u> P-I on Additional CNG <u>and</u> Co-I on New R01	
Clinical: Pathways	<u>Scholar:</u> <i>Assoc Prof</i>	≥ 10	≥ 12	Co-I on New CNG	50% In Clinical Trials
	<u>Scholar:</u> <i>Prof</i>	≥ 10	≥ 16	Co-I on Additional CNG	
	<u>Educator:</u> <i>Assoc Prof</i>	≥ 5	≥ 10	Co-I on New Education CNG	Evidence of Excellence in Education required
	<u>Educator:</u> <i>Prof</i>	≥ 5	≥ 14	Co-I on Additional Education CNG <u>and</u> Successful development of significant new Education program	
	<u>Excellence:</u> <i>Assoc Prof</i>	*	*	*	* Recommend support of scholarly activities
	<u>Excellence:</u> <i>Prof</i>	*	*	*	
Research: Pathway	<i>Assoc Prof</i>	≥ 25 (since <i>Assist Prof</i>)	≥ 20	P-I on Renewed R01 <u>or</u> P-I on Additional R01	
	<i>Prof</i>	≥ 25 (since <i>Assoc Prof</i>)	≥ 20	P-I on Renewed R01 <u>and</u> P-I on Additional R01	
Auxiliary/Adjunct: Pathway	<i>Assoc Prof</i>	*	*	*	* Recommend support of scholarly activities
	<i>Prof</i>	*	*	*	

Table 1: 2012 Department of Radiology AP&T Research Publication/Funding Metrics

Table 2: 2012 Department of Radiology National/International Recognition Index

Categories	Representative Evidence of Recognition	
	National – Level	National-Leadership/International – Level
Clinical Service	<ul style="list-style-type: none"> • National patient referrals for expertise • National clinical consultant • Pioneered nationally important clinical development 	<ul style="list-style-type: none"> • Inter-national patient referrals for expertise • Inter-national clinical consultant • Pioneered Inter-nationally important clinical development
Research & Scholarship	<ul style="list-style-type: none"> • National award/distinction for scholarship¹ • Member: NIH Study Group or Institute review committee • Member: National multi-center trial/research program • Invited manuscript/key address: National organization 	<ul style="list-style-type: none"> • Inter-national award/distinction for scholarship² • Leader: NIH Study Group or Institute review committee • Leader: National multi-center trial/research program • Invited manuscript/key address: Inter-national organization • Consultant: National/Inter-national professional organization • Holder: Revenue-generating patent • Editor/Author: High-profile book/journal Issue/CME series
Education	<ul style="list-style-type: none"> • National award/distinction for educational work • Pioneered nationally important educational development • Director: Residency program • Contributor: Board certification process³ • Faculty: National-level training program⁴ 	<ul style="list-style-type: none"> • Inter-national award/distinction for educational work • Pioneered inter-nationally important educational development • Reviewer: Departments or residency programs • Leader: Board certification process • Leader: National-level training program
Administration	<ul style="list-style-type: none"> • National award/distinction for administrative work • Member: Committees of national professional organizations⁵ • Member: Research foundation board⁶ • Member: IF>1.2 Journal editorial board • Reviewer: Several major journals • Medical consultant: State government 	<ul style="list-style-type: none"> • Inter-national award/distinction for administrative work • Chair: Committee of national professional organization • Leader: National/Inter-national professional organization⁷ • Editor: IF>1.2 Journal • Medical consultant: Federal government
Examples	¹ FACR	
	² RSNA Gold Medal Award	
	³ ABR examination question writer	
	⁴ ACR Training Center education programs	
	⁵ ACR Appropriateness Criteria Panel	
	⁶ Susan G. Komen for the Cure Foundation	
	⁷ Elected President, Vice President, or Chairman of R&E Foundation of RSNA	

Appendix 1: 2012 Survey of Clinical Scientist Tenure Options in National Top-Tier Departments of Radiology

Department	Rank (Dx Rad & Rad Onc)*	Rank (Dx Rad)**	Tenure Option	Prerequisites for Tenure				
				Any Grant	NIH Grant	Manuscript Number Level	IF Level	HI Level
UCLA	16	34	Y	N	N	N	N	N
UCSD	9	16	Y	N	N	N	N	N
UCSF	5	2	Y	N	N	N	N	N
U Chicago	20	39	Y	N	N	N	N	N
Duke U	14	18	Y	N	N	N	N	N
Emory U	15	26	Y	N	N	N	N	N
Johns Hopkins U	2	5	Y	N	N	N	N	N
MD Anderson	63	21	Y	N	N	N	N	N
U Miami	NA	NA	Y	N	N	N	N	N
U Michigan	4	12	Y	N	N	N	N	N
Mount Sinai	30	45	Y	N	N	N	N	N
NYU	11	17	Y	N	N	N	N	N
Northwestern	36	22	Y	N	N	N	N	N
U Pennsylvania	3	6	Y	Y	Y	N	N	N
U Pittsburgh	7	13	NA	NA	NA	NA	NA	NA
UVA	39	44	Y	N	N	N	N	N
Wake Forest U	18	33	Y	Y	N	N	N	N
U Washington	10	11	Y	N	N	N	N	N
Washington U	6	7	Y	N	N	N	N	N
U Wisconsin	35	20	Y	Y	N	N	N	N
Yale U	8	14	Y	Y	Y	N	N	N

• Blue Ridge Report
 ** Total Departmental NIH funding

Appendix 2: Impact Factors of Representative Radiology/Imaging Science-Related Journals

Representative Journals Related to: General Academic Radiology/Imaging Sciences, Subspecialty Academic Radiology/Imaging Sciences or Specific Imaging Modalities/Technologies	Impact Factor
<i>Journal of Nuclear Medicine (J Nucl Med)</i>	7.022
<i>Radiology (Radiology) / Radiographics (Radiographics)</i>	6.06 / 2.76
<i>Investigative Radiology (Invest Radiol)</i>	4.665
<i>American Journal of Neuroradiology (AJNR)</i>	3.464
<i>Magnetic Resonance in Medicine (Magn Res Med)</i>	3.267
<i>American Journal of Roentgenology (AJR)</i>	2.950
<i>Journal of Magnetic Resonance Imaging (JMRI)</i>	2.747
<i>International Journal of Cardiovascular Imaging (Int J Cardiovasc Imag)</i>	2.539
<i>Academic Radiology (Acad Radiol)</i>	2.195
<i>Journal of Vascular and Interventional Radiology (JVIR)</i>	2.064
<i>Magnetic Resonance Imaging (MRI)</i>	2.042
<i>Abdominal Imaging (Abdom Imag)</i>	1.950
<i>Skeletal Radiology (Skeletal Radiol)</i>	1.387
<i>Journal of Computer Assisted Tomography (JCAT)</i>	1.383
<i>Journal of Thoracic Imaging (J Thorac Imag)</i>	1.207

COM Policy on Salary Recovery

The College of Medicine expects that all research active faculty members at the level of associate or full professor will recover a minimum of 6 months (50%) of their salary from external sources. This includes faculty members with 9 month appointments; such faculty members are expected to recover 6 months of their combined academic semesters and off duty semester (OD) salaries. At the discretion of the department chair, a three year rolling average of salary recovery may be used to determine whether a faculty member has met these expectations. The fiscal year of July 1-June 30 will be used for these calculations.

Newly hired faculty at the assistant professor level will be expected to recover 25% of their salary within three years, and 50% within 6 years.

Guidelines for direct salary appointment to grants for new grant submissions and for existing grants follow.

NEW GRANT APPLICATIONS

- 1) All new grants must have budgeted salary recovery to cover the principal investigator's time unless it is precluded by the granting agency (for example, NSF grants).
- 2) On a RO1-type grant or equivalent (eg. DoD, P01, U54 or SPORE project) a minimum of 3 calendar months (25% effort) must be charged to the grant. This includes Multi-PI (MPI) grants, e.g., for a Dual-PI application 3 months effort should be charged for each investigator.
- 3) For program/project type grants and/or cooperative agreement (eg. P01, U01) co-investigators who direct programmatic and/or shared service cores should be budgeted for a minimum of 1.2 calendar months (10%) effort.
- 4) For grants that allow salary recovery but which limit budgets <\$150,000 per year (e.g., NIH R21 grants or grants from private foundations) a minimum of 1.2 calendar months (10%) of PI salary must be budgeted.
- 5) No cost share of effort is allowed on new grant applications unless specifically required by the granting agency; the written permission of the chair and dean is required in such cases.
- 6) Any exceptions to these guidelines must be provided in writing to the chair with subsequent approval by the chair and the dean. 7) Budgets and internal PA-05 forms for either 12 month appointments or 9 month appointments must follow NIH guidelines for determining effort commitment by calendar months. See:

http://grants.nih.gov/grants/policy/person_months_faqs.htm#1040

Budgeting for 12 month appointments is straight-forward, as calendar months of commitment are directly equivalent to salary months. 9 month appointments are more complicated, and the following examples are provided to clarify how budgets should be prepared:

a) Example of a 9 month/off quarter calculation that fits the NIH guidelines and would be approved by the department and college:

25% time/effort for 9 months and 3 months summer term at 25% time/effort to the project, that is 25% through the entire year

$(9 \text{ mo} \times 25\% = 2.25 \text{ academic months}) + (3 \text{ mo} \times 25\% = .75 \text{ months OQ months}) = 3.0 \text{ months}$.

b) Example of a 9 month/off quarter plan that doesn't fit NIH guidelines and would not be approved by the college:

0% effort for 9 months (0 months) and 100% effort for three months (3 months)=3.0 months

c) Example by which a PI could recover 2.5 months of off-quarter under semesters with one grant:



39.0% effort for 9.0 months and 83% effort for 3.0 summer months= 3.5 months + 2.5 months=6 months (50% effort through the entire year);

Since 9 month salary is spread out over 12 months, the grant would be charged 29.3 % of 9 month salary per month.

Per Office of Research and Provost guidelines for 9 month appointments under semesters, the extra 2 weeks charged to the grant during the academic year in this example could be repaid by the department to provide the full 3 month OD salary.

d) Example of full summer salary from two NIH grants, each with 3 months effort:

$2X \{1.75 \text{ months (academic year)} + 1.25 \text{ (off-quarter)}\} = 3 \text{ months total (25\% effort)}$

Each grant would be charged 14.6% of the 9 month salary per month.

Per Office of Research and Provost guidelines for 9 month appointments under semesters, the extra 2 weeks charged to the grants during the academic year in this example could be repaid by the department to provide the full 3 month OD salary.

e) Example for 3 grants; every grant is required to budget 3 months effort

$3X\{2.17 \text{ months (academic)} + 0.83 \text{ (off-quarter)}\} = 3 \text{ months}$

Total effort would be 9 months (75%)

Each grant would be charged 13.5% per month. As above, the additional 0.5 months of OD could be returned by the department from the extra two weeks paid during the regular academic year.

f) Example of a R21 or foundation grant with 1.2 months effort

0.6 months academic + 0.6 months OD= 1.2 calendar months.

g) Example of a NIH grant as a co-I with 1.2 months (10%) effort

0.6 months academic + 0.6 months OD= 1.2 calendar months

CURRENT ACTIVE GRANTS

Essentially the same rules will apply for active grants, that is, a minimum of 3 months (25%) effort per PI per grant must be charged independent of the type of faculty appointment held. To allow time for planning and implementing any necessary adjustments with NIH, the guidelines for existing grants will take effect September 1, 2012. Thus, this will effect off duty salary beginning in fiscal 2013, and grant should be adjusted accordingly.

1) All active grants should be adjusted to a minimum of 3 months (25%) effort at the next non-competitive renewal of the grant.

2) No cost share of effort on an active grant is allowed without the written approval of the chairman and the dean. Cost sharing is allowable on grants that are in No Cost Extensions (grants that are still active, but without new budget years).

3) For active grants held by faculty with 9 month faculty appointments, effort assigned to the off-duty semester must be at least equal to effort assigned to academic semesters.

Example of adjustment of a grant held by a PI with a 9 month appointment

Current: 0 months effort academic semesters + 3 months effort off-duty semester=3months effort

Adjusted: 1.5 months effort academic semesters + 1.5 months effort off-duty semester=3 months effort.



Department of Radiology

Richard D. White, MD
FACR, FACC, FAHA, FSCCT
Professor & Chairman

Director, Imaging Signature Program

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June 6, 2011

Nathan Hall, M.D.



Dear Dr. Hall:

This is to document the terms and conditions of your appointment to the Chief, Division of Molecular Imaging/Nuclear Medicine in the Department of Radiology.

In this position, you will be expected to supervise the clinical, research and educational aspects of the Department related to molecular imaging and nuclear medicine.

As we have discussed, these duties and responsibilities will require additional efforts above and beyond that of your expected clinical efforts. In recognition of these efforts, you will receive an annual increase of \$50,000 to the base Faculty Group Practice salary. The \$50,000 administrative component will stop if and when you no longer hold the position.

Congratulations on your position as the Chief, Division of Molecular Imaging/Nuclear Medicine. I am pleased that you have accepted this position and I am confident that you will bring new ideas and enthusiasm to this area and propel it to the highest levels of excellence.

Sincerely,

Richard D. White, MD, FACR, FACC, FAHA, FSCCT
Professor & Chairman, Department of Radiology

Director, Imaging Signature Program



PHYSICIAN EMPLOYMENT AGREEMENT

This Physician Employment Agreement ("Agreement") is entered into as of July, 1, 2011 ("Effective Date") by The Ohio State University (the "University") on behalf of its Office of Health Sciences, Faculty Group Practice Department of Radiology and Nathan Hall, M.D., (the "Physician").

RECITALS

WHEREAS, the University conducts its medical, teaching, research and clinical activities through its Medical Center, which includes its College of Medicine (the "COM"), University Hospitals, Arthur G. James Cancer Hospital and Richard J. Solove Research Institute (the "Medical Center"), and Office of Health Sciences, which are operated as units within the University; and

WHEREAS, the University, in furtherance of its medical, teaching, research and clinical missions, operates the Faculty Group Practice ("FGP") within its Office of Health Sciences for the provision of professional medical services in order to make quality health care readily available and accessible to the community with the intention of creating benefits that will be realized by the current patients of the Medical Center, the students of the COM and the citizens of the State of Ohio who will utilize the professional services of the faculty of the COM and the patient care services of the Medical Center and its facilities, and

WHEREAS, Ohio State University Physicians, Inc. ("OSUP") is a tax-exempt corporation which was created to advance the purposes of the medical education program and related research and clinical service activities of the COM, and is the sole recognized College Central Practice Group under the COM Medical Practice Plan effective December 15, 2002 (the "Practice Plan"), as amended. Under the Practice Plan, OSUP is the sole administrator of the patient care of the faculty of the COM; and

WHEREAS, the University and OSUP have entered into an Academic Medical Center Memorandum of Understanding dated January 1, 2011, whereby the University and OSUP agreed to create an affiliated relationship that will establish an integrated model for the delivery of teaching, research and patient care services by the faculty of the COM using the medical facilities of OSUP and the University; and

WHEREAS, the professional medical services of Physician will be performed pursuant to a Master Professional Service Agreement dated January 1, 2011 (the "PSA") between OSUP and the University whereby OSUP will contract with the University to obtain the Physician's professional medical services from the University; and

WHEREAS, Physician possesses specialized training and experience in the medical specialty of radiology and desires to accept employment with the University in the FGP under the terms and conditions of this Agreement, and the University desires to employ Physician under the terms and conditions of this Agreement;

THEREFORE, the parties agree as follows:

1. APPOINTMENT & TERM

1.1 **Appointment.** The Ohio State University hereby employs Physician and Physician hereby accepts employment as a physician with an appointment within the Senior Administrative and Professional staff of the University. Additionally, Physician has an academic appointment in The Ohio State University College of Medicine (the "College of Medicine") that is outlined in a separate Letter of Offer from the Chair of the Department of Radiology, (the "LOO"), a copy of which is attached hereto as Exhibit A. Except as specifically stated otherwise within this Agreement, all rules and regulations of the University apply to this position. Physician acknowledges that Ohio State University Physicians, Inc. ("OSUP") has been established and that Physician shall become and remain a member of OSUP at a time mutually agreed upon by OSUP and the University. Therefore, the University may, in its sole discretion, contract with OSUP to provide Physician's professional services to OSUP.

1.2 **Term.** The term of this Agreement shall commence on the Effective Date and continue through June 30, 2014 ("Term"), unless earlier terminated in accordance with the Termination provisions of this Agreement. Physician's employment pursuant to this Agreement is subject to the approval of the University Board of Trustees, sufficiency of funding, the laws of Ohio, and the rules and regulations and personnel policies of the University. By May 1, 2014, the Parties may mutually agree whether or not to renew this Agreement and, if the parties agree on renewal, the terms of such agreement.

2. DUTIES & QUALIFICATIONS

2.1 Physician will comply with all policies, procedures, rules, and regulations of the University, including but not limited to The Ohio State University Medical Center, that may be adopted and published from time-to-time.

2.2 **Clinical, Teaching and Research Duties.** Physician shall perform the clinical duties contained in the position description, attached hereto as Exhibit B, and incorporated herein by this reference (the "Patient Care Services"). All of the Patient Care Services shall be performed in compliance with the applicable medical staff bylaws and the policies, rules, and procedures established from time to time by the University and in accordance with the current standards of an academic medical center.

2.3 **University Integrity Program.** Physician shall be familiar with the University Integrity Program Compliance Manual and The Ohio State University Medical Center Standards for Employee Conduct, both attached hereto as Exhibit C, and shall adhere to their standards and requirements. Physician shall promptly provide complete and accurate medical charts for all services rendered by the Physician, including the name of the patient, the date of service, the nature and extent of services provided, patient diagnosis, and all supporting information necessary for the University to bill such services and to obtain payment. All clinical and administrative responsibilities shall be under the direction of the Chair of the Department of Radiology, the CEO of the FGP and the Chief Medical Officer of the Medical Center (the "Chief Medical Officer"). Physician shall also participate in and cooperate with the implementation of all quality management programs of the University.

2.4 **Performance Review.** Physician's performance shall be reviewed annually by the Department Chair, the CEO of the FGP and the Chief Medical Officer.

2.5 **Medical Staff Appointment and Clinical Privileges.**

2.5.1 Physician must apply for, be granted and maintain medical staff appointment and clinical privileges at The Ohio State University Hospitals commensurate with the professional services required under this Agreement. Physician may also be required to apply for, and be granted medical staff appointment and clinical privileges at The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute ("James") if the professional services to be provided under this Agreement are also rendered at the James. If Physician is granted privileges at the James then the Physician must maintain such medical staff appointment and clinical privileges. Physician's application shall be processed pursuant to the Medical Staff Bylaws of the University Hospitals and the James.

- 2.5.2 Upon termination or expiration of the Agreement for any reason, such medical staff appointment and clinical privileges of the Physician shall automatically expire.
- 2.5.3 Physician authorizes the hospitals and clinics of the University to share among themselves credentialing, quality and peer review information pertaining to the Physician's clinical competence and/or professional conduct. Such information may be shared at initial appointment and/or reappointment and at any time during the Physician's medical staff appointment to the medical staffs of the hospitals of the University.
- 2.5.4 Physician authorizes the Medical Center to release information to managed care organizations, regulating agencies, accreditation bodies and other health care entities for the purposes of evaluating the Physician's qualifications pursuant to a request for appointment, clinical privileges, participation or other credentialing or quality matters.

2.6 Licensure. Physician shall comply with all laws, rules and regulations of all applicable governmental authorities pertaining to licensure, health and safety, documentation and billing for services, and any other duties and obligations under this Agreement. Physician is, and at all times during the Term of this Agreement, shall continue to be, duly licensed and authorized to practice medicine in the State of Ohio. Physician has and will maintain all necessary narcotics and controlled substances registration numbers required for the performance of the duties under this Agreement. Physician shall be board certified in Nuclear Medicine or otherwise meet the board certification requirements of the applicable medical staff bylaws.

2.7 Exclusive Practice. Physician agrees to devote the Physician's professional efforts exclusively to the interest of the University and shall not engage in the practice of medicine other than for the University. Professional services in this context shall include responsibility for all aspects of patient care and services in accordance with recognized standards of care. Physician hereby agrees that during the Term of this Agreement, he or she shall not enter into any type of arrangement with any third party to render any professional services without the prior written consent of the Chair of the Department. Voluntary charitable care is encouraged and will be approved by the University with the consent of the chair and the dean. The Physician further agrees to abide by the

University Policy on Faculty External Consulting for the provision of administrative or consultative services.

2.8 **Scheduling and Patient Care Responsibilities.** The Chair or his/her designee shall retain the right to reasonably schedule the physician's hours and patient care responsibilities, including but not limited to call coverage, consistent with the needs of the department. The Physician shall adhere to the scheduling and other access standards of the department, including, but not limited to:

2.8.1 Providing a reasonable amount of care to self-pay, including charity, patients of OSU and residents of the community; and

2.8.2 Seeing and treating Medicare and Medicaid patients.

2.9 **Absences.** Physician shall provide the Chair or his/her designee with not less than thirty (30) days advance notice of any expected absence or other inability to perform scheduled services and shall immediately notify the Chair or his/her designee of any illness, emergency, or other case giving rise to an unexpected absence or inability to perform such service.

2.10 **Nondiscrimination.** Physician shall treat all patients without discrimination on account of sex, age, color, national origin, ancestry, race, religion, Vietnam era or other military status, disability, sexual orientation or gender identity or expression.

2.11 **Support of The Ohio State University Medical Center.** Physician shall refer patients treated by Physician to practitioners, providers and suppliers within The Ohio State University Medical Center provided, however, that referral within The Ohio State University Medical Center shall not be required if: (i) the patient expresses a preference for a different practitioner, provider or supplier; (ii) the patient's insurer determines the practitioner, provider or supplier; or (iii) the referral is not in the best interest of the patient in Physician's reasoned medical judgment. The decisions regarding the diagnosis and treatment of patients are the province of a physician and, therefore, all such decisions will be the responsibility of Physician to be rendered in accordance with the standards of good medical practice and in accordance with the practice guidelines approved or endorsed by the University.

3. Compensation

3.1 **Total Base Salary.** The University shall pay annual compensation (the "Total Base Salary") totaling three hundred fifty four thousand two hundred forty dollars and sixty eight cents dollars (\$354,240.68) minus applicable withholdings to Physician for

Clinical Services performed pursuant to this Agreement and for Academic Services performed pursuant to the academic appointment. Total Base Salary is comprised of the following:

- 3.1.1 Subject to Section 3.3 of this Agreement, Clinical Services Salary of \$268,251.96 annually payable in substantially equal monthly installments for the Term of the Agreement.
- 3.1.2 Academic Services Salary, as more fully described and subject to the terms in the LOO as compensation for the Physician's appointment, of \$35,988.72 annually for the term of the LOO.
- 3.1.3 As Division Chief of Nuclear Medicine your salary of \$50,000.00 as more fully described and subject to the Division Chief Appointment Letter attached to this Agreement as Exhibit E. You will be compensated at this salary so long as you hold this position.

3.2 **Other Benefits.** In addition to the benefits defined in the LOO, Physician shall be eligible for any applicable benefits provided for similarly situated employees of the University. Continuing Medical Education expenses are determined by Physician's college of medicine department. As a Physician in the department of Radiology, you will receive up to eight thousand dollars (\$8,000) per fiscal year (prorated if partial fiscal year worked) to cover the reasonable costs of attendance, including fees and travel expenses, subject to the University's travel policies. Physician shall provide the University with adequate proof of such costs as required under University policy, as are incurred by Physician. This amount may be applied to conferences or seminars and related travel expenses, publications and membership dues.

3.3 **Productivity.** By the commencement of this Agreement, it is expected that Physician will be clinically productive for Physician's patient care services, as measured by Work Relative Value Units ("wRVUs"), at 5,192 wRVUs annually (433 monthly), which represents the 50th percentile for an academic Nuclear Medicine specialist per the then current *Association of Administrators in Academic Radiology Faculty Salary and Productivity Survey*. (hereafter, called "Productivity Requirement"). Physician will be provided with quarterly reports detailing the Physician's wRVUs and other practice financial information (e.g., practice net collections, practice expenses, etc.). If the Physician's wRVU falls short of the Productivity Requirement, then the Chair may take

reasonable and appropriate action. The Chair may choose not to take action if the Department or Division, to which the physician is assigned, as a whole met the productivity expectation. The Physician and the Department Chair may, within a thirty (30) day period, jointly develop a plan to increase Physician's wRVUs. If a decision is made to enter into such a plan, then the parties shall implement such plan immediately over the next one hundred and twenty (120) day period (the "Implementation Period"). After the Implementation Period, should the Physician's productivity not satisfy the Productivity Requirement, after providing Physician with thirty (30) days prior written notice, the University may, in its sole and absolute discretion and without further delay, decrease Physician's Clinical Services Salary. The patient care services portion of the Clinical Services Salary will decrease to an amount determined by multiplying the patient care services salary by the ratio of the Physician's actual wRVUs to the Productivity Requirement. The parties shall evaluate Physician's wRVUs funding every six (6) months thereafter. If the Productivity Requirement is met at that time, the full Clinical Services Salary shall be reinstated for the next twelve (12) month period. If the Productivity Requirement is not met, the adjusted Clinical Services Salary shall remain in effect for the next six (6) month period.

3.4 **Clinical Services and Performance Incentive Plan.** In addition to the Physician's base salary, Physician may be eligible for an incentive bonus up to \$89,100 minus applicable withholdings based upon the approved faculty incentive plan established by the department, attached hereto Exhibit D. In the event that your performance and productivity exceed expectations you may be eligible for additional compensation subject to an additional fair market value evaluation obtained by the University prior to receipt of the additional compensation.

3.5 **Compliance with Billing Compliance Program.** The Physician may be ineligible to receive all or a portion of the Clinical Services Salary in the event that the Physician does not comply with the University's billing compliance programs.

3.6 **Compliance with Section 409A of the Internal Revenue Code.** This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and, to the maximum extent permitted by law, shall be administered, operated and construed consistent with this intent. Any reimbursements or in-kind benefits provided under this Agreement that are subject to Section 409A of the Code shall be made or provided in accordance with the

requirements thereof, including, where applicable, the requirements that (a) any reimbursement is for expenses incurred during the period of time specified in this Agreement, (b) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during a taxable year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, (c) the reimbursement of an eligible expense will be made no later than the last day of the taxable year following the taxable year in which the expense is incurred, and (d) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. In addition, each payment of compensation under this Agreement shall be treated as a separate payment of compensation for purposes of applying the exclusion from Section 409A of the Code for certain short-term deferral amounts. Nothing in this Agreement shall be construed as the guarantee of any particular tax treatment to Physician, and the University shall not have any liability with respect to any failure to comply with the requirements of Section 409A of the Code.

4. RESPONSIBILITIES OF THE UNIVERSITY

4.1 **Space, Services and Equipment.** The University shall provide Physician with appropriate space, equipment, staff, billing services, and supplies to conduct the practice of medicine on behalf of the University.

4.2 **Professional Liability Insurance.** Upon application and acceptance by the University's Self Insurance Program, Physician shall be provided professional liability coverage on an occurrence basis at a level of at least two million dollars (\$2,000,000) per claim for medical services provided: a) during the term of Physician's employment, and b) within the scope of this Agreement.

4.3 **Billing and Collection.** The University shall be responsible for the billing and collection of payments for medical services rendered to patients by Physician. Physician agrees to appoint the University as Physician's agent to bill patients in Physician's name; receive from and on behalf of Physician's payments from insurers, Medicare, Medicaid and all other third party payers; and take possession of and endorse in the name of Physician any notes, checks, money orders, insurance payments and any other instruments received in payment for the medical services rendered by Physician. Physician shall execute all necessary documentation required by Medicare permitting the University to bill and receive payment from Medicare Part B. The University will assume full financial responsibility for all billing and collection

activity, and any errors resulting solely from its actions. The University may contract with any entity that, in its judgment, is qualified to perform these billing and collection services. Physician shall cooperate and provide assistance as requested by the University to enable the University to carry out its billing and collection activities. All fees for Physician services rendered in performance of this Agreement, including without limitation, fees for office visits, home visits, hospital visits, outpatient services, and any other activity resulting in the generation of a fee for medical services shall accrue and belong exclusively to the University. All uncollected charges and accounts receivable attributable to Physician services shall remain the sole and exclusive property of the University upon expiration or termination of this Agreement and Physician's employment.

4.4 **Third Party Payer Agreements.** On behalf of Physician, the University and/or OSUP shall have the right and authority to enter into provider agreements with insurance companies, HMOs, PPOs, employers, physician organizations or networks, PHOs and other third party payers and to require the participation of Physician in such agreements.

4.5 **Authorization.** Physician hereby authorizes the University and/or OSUP to compile and submit any and all information necessary for credentialing and peer review purposes to accrediting, licensure and regulating entities, insurance companies, HMOs, PPOs, employers, Physician organizations or networks, PHOs, and other third party payers. The University and/or OSUP shall inform Physician of and Physician shall adhere to all policies and requirements contained in such agreements as implemented by the University and/or OSUP.

5. ELIGIBILITY TO PARTICIPATE IN HEALTH CARE PROGRAMS & NOTIFICATIONS

5.1 **Eligibility To Participate In Health Care Programs.** Physician represents and warrants that Physician is not excluded from participation, and is not otherwise ineligible to participate, in a "Federal Health Care Program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program. In the event Physician is excluded from participation or becomes otherwise ineligible to participate in any such program during the Term of this Agreement, Physician will notify the Chief Medical Officer in writing immediately upon the occurrence of such event. The University may terminate Physician immediately in the event of exclusion under Section 6.2.3. of this Agreement.

5.2 **Notifications.** Physician shall notify the Department Chair, CEO of the FGP and the Chief Medical Officer immediately upon the occurrence of any of the following: (i) any modification, restriction, suspension, or revocation of Physician's license to practice medicine in Ohio or of Physician's board certification; (ii) any modification, restriction, suspension, or revocation of Physician's registration to prescribe or to administer controlled substances; (iii) the imposition of any sanctions against Physician under the Medicare or Medicaid or successor programs; (iv) any other professional disciplinary action or criminal or professional liability ("malpractice") action of any kind against Physician which is either threatened, initiated, in progress, or completed as of the Effective Date and at all times during the Term; (v) if the Physician is charged with, or convicted of, a felony; or (vi) Physician's incapacity or impairment or any condition affecting Physician which renders Physician unable to provide the services as required under this Agreement, which notice shall set forth with particularity the reasons for or the description of the matter.

6. TERMINATION

6.1 **Without Cause Termination.** Either party may terminate this Agreement without cause by sending written notice to the other party sixty (60) days in advance.

6.2 **Termination by University.** The following sections of the Agreement apply exclusively to this Physician Employment agreement. This Agreement may be terminated for cause immediately by the University upon the occurrence of any of the following events:

- 6.2.1 Upon the loss or suspension (whether temporary or permanent) of Physician's license to practice medicine under the laws of the State of Ohio, or the loss or suspension (whether temporary or permanent) of Physician's registration to prescribe or administer controlled substances;
- 6.2.2 Upon Physician's conviction or guilty plea of a felony;
- 6.2.3 Upon Physician's exclusion from participation in a government sponsored healthcare program;
- 6.2.4 Upon the revocation of Physician's staff privileges at any University hospital; or
- 6.2.5 Upon the loss of Physician's academic appointment at the College of Medicine.

6.3 **Termination by University With Ability To Cure.** This Agreement may also be terminated by the University for cause upon thirty (30) days written notice to the Physician, upon the following events, provided, however, that the Physician may successfully cure the following defaults to the University's satisfaction within such thirty (30) day period:

- 6.3.1 Upon Physician's breach of the Agreement or other non-compliance with the position description or terms of this Agreement;
- 6.3.2 Upon the University's good faith determination that Physician is not providing adequate patient care or that the health, safety, or welfare of patients is jeopardized by Physician's continued performance under this Agreement;
- 6.3.3 Upon the failure of the Physician to actively participate in Medicare, Medicaid (or successor programs), or any managed care program in which the University is a participant;
- 6.3.4 Upon the failure of Physician to meet the standards of performance of the University;
- 6.3.5 Upon Physician becoming ineligible for professional medical liability insurance coverage due to Physician's acts or omissions;
- 6.3.6 Upon Physician conducting himself in an unprofessional, unethical or fraudulent manner, and if, in the opinion of the University, such conduct is detrimental to the reputation, character and standing of the University; or
- 6.3.7 Upon Physician's failure to comply with the duties outlined in the LOO, as determined by the University.

6.4 **Physician's Termination.** The Physician may terminate this Agreement if the University breaches any material term of this Agreement and does not cure such breach within thirty (30) days following receipt by the University of written notice thereof from the Physician.

6.5 **Termination Due To Change In Law.** The parties recognize that this Agreement is subject to applicable state, local and federal law, and shall be subject to amendments of such laws and regulations and to new legislation (collectively, "Law"). In the event that any change in applicable Law, or change in interpretation of such Law, is inconsistent with the terms of this Agreement, the Law shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall

negotiate in good faith to accommodate the terms and interests of this Agreement to the greatest extent possible consistent with the requirements of applicable Law. If the parties cannot agree upon mutually acceptable terms, the University may terminate this Agreement upon thirty (30) days written notice to Physician.

6.6 Termination Due to Death or Disability. In addition to reasons for termination described elsewhere in Section 6 of this Agreement, the University may terminate this Agreement due to Physician's death or disability as stated below.

6.6.1 This Agreement may be terminated by the University upon the death of the Physician.

6.6.2 Subject to applicable federal, state and local laws, rules and regulations as well as the applicable University policies, procedures and guidelines, this Agreement may also be terminated by the University upon Physician's illness or disability which precludes Physician from performing the essential functions of the Physician's job.

7. CONFIDENTIALITY, ACCESS TO RECORDS & RESTRICTIVE COVENANTS

7.1 Confidentiality. During the Term and at all times thereafter, Physician agrees to comply with all of the privacy and security requirements of the Health Insurance Portability and Accountability Act ("HIPAA") regarding all protected health information ("PHI") that Physician encounters during the Term. In accordance with HIPAA, Physician agrees to maintain the confidentiality of all PHI after the termination of this Agreement. Physician also agrees to keep absolutely confidential during employment and thereafter all confidential information of the University including, but not limited to, all fee schedules or price lists and all financial information and business plans.

7.2 Access to Records. All patient records, films, referring physician correspondence, hospital charts, billing records, reports, insurance records, and any other document concerning any patient treated by Physician while employed by the University shall belong to and remain the property of the University. All such documents must be returned to the University's possession upon completion of Physician's employment or expiration of this Agreement. After completion of Physician's employment, Physician may be granted access to patient records as needed to respond to litigation and any regulatory actions, in accordance with the Law.

7.3 **Non-Solicitation.** Physician agrees that during the Term and for a period of one (1) year after termination of this Agreement, Physician shall not, other than on behalf of and for the exclusive benefit of the University and/or OSUP, directly or indirectly, *within a ten (10) mile radius of any University facility where Physician regularly performs Patient Care Services:*

7.3.1 Solicit the business of any person, firm, entity, institution or business with whom the University has or has had an arrangement to provide medical services;

7.3.2 Influence or encourage any employee of the University to terminate that employment relationship;

7.3.3 Solicit or attempt to solicit any of the University's patients to receive medical services from Physician or any employer, person, firm, entity or business associated with Physician (other than the University); or

7.3.4 Interfere with or disrupt or attempt to disrupt, or take any action that could reasonably be expected to disrupt any past or present or prospective relationship, contractual or otherwise, between the University and any physician, physician group, entity, person, firm, institution, business, clinic, HMO, insurance company or plan, third party payor, or other entity with whom the University does business.

Physician acknowledges and agrees that the geographic area set forth above is the area from which the University derives a substantial portion of its patients, that the foregoing restriction is a reasonable one for the protection of the good will and business of the University and that the foregoing restriction does not place any undue hardship on Physician.

7.4 **Injunctive Relief.** Physician further acknowledges and agrees that the University's remedy at law for any breach of the obligations set forth in this Article would be inadequate and that temporary and permanent injunctive relief may be granted in any proceeding which may be brought to enforce the provisions of the Article without the necessity of proof of actual damages. Such remedy shall be cumulative, non-exclusive and shall be in addition to any other available remedy. In the event that any provision of this paragraph is determined by a court of competent jurisdiction to be unenforceable, Physician understands that the court has jurisdiction to reform this paragraph and enforce the intent of the parties to the maximum extent permitted by

law.

The time period reflected in this Article shall not include such time as may be required for litigation or appeal or such time as Physician is in breach of this Agreement so that such one (1) year period shall be extended for a period equal to that in which Physician is in breach of this Agreement and such time as may be required until final adjudication of any litigation or appeal.

The covenants contained in this Article shall be construed as independent of any other provisions of this Agreement and the existence of any claim or cause of action of Physician against the University.

8. COMPLIANCE WITH LAWS

The compensation set forth in this Agreement has not been determined in any manner which takes into account the volume or value of any Medicare, Medicaid or any other third party referrals of business between Physician and the University. The parties entered into this Agreement with the intent of conducting their relationship in full compliance with applicable local, state and federal laws including compliance with the federal and state Medicare and Medicaid anti-fraud and abuse laws and regulations and specifically the Employee Safe Harbor and the federal law entitled *The Financial Relationships between Physicians and Entities Furnishing Designated Health Services* ("Stark") and specifically the Employee exception under Stark.

Notwithstanding any unanticipated effect of any provision herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of the Medicare and Medicaid fraud and abuse or Stark provisions. Such payments are intended solely as compensation for Physician's services as delineated in this Agreement and for Physician's faculty appointment.

9. MISCELLANEOUS

9.1 **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter expressly addressed herein and there shall be no implied terms in addition to the express terms contained herein.

9.2 **Amendments.** Any amendments to this Agreement must be in writing and signed by both of the parties hereto.

9.3 **Applicable Law.** All questions regarding the validity or construction of this Agreement shall be determined in accordance with the laws of the State of Ohio.

9.4 **No Waiver.** The failure or delay of any party to exercise any right, power or privilege under this Agreement shall not operate as a waiver of such right, power or privilege. The partial exercise of any right, power or privilege shall not operate as a waiver of any other right, power or privilege under this Agreement.

9.5 **Assignment.** Physician shall have no right or power to assign or otherwise transfer this Agreement, or any of the Physician's rights, duties, or interests herein without prior written consent of the University; any such purported or attempted assignment shall be null, void and of no force or effect. The University shall, in its sole discretion, be permitted to assign this Agreement.

9.6 **Headings.** Headings are provided for the convenience of the parties, and shall not affect the interpretation of any provision.

9.7 **Notices.** Any notice, demand, approval, consent, or other communication required, permitted, or desired to be given hereunder shall be deemed received two (2) business days following mailing of certified or registered mail (return receipt requested) or immediately upon hand delivery addressed as follows:

IF TO PHYSICIAN:

Nathan Hall, M.D.


IF TO UNIVERSITY:

Chair, OSU Department of Radiology
Suite 450
395 W. 12th Avenue
Columbus, OH 43210

WITH A COPY TO:

Associate General Counsel
OSU Office of Legal Services
200 Melling Hall
370 West 9th Avenue
Columbus, OH 43210

or to such other address and to the attention of such other person(s) or officer(s) as either party may designate by written notice to the other party. Further, Physician shall