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April 20, 2016

Bernard Pafunda, Esq.  
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175 East Main Street, Suite 600  
Lexington, Kentucky 40507-1314

**Via Electronic Mail with Hard Copy to Follow via U.S. Mail**

RE: Dr. Kearney

Dear Mr. Pafunda:

On behalf of the University, I write concerning Dr. Kearney's continued status as a tenured faculty member. When the Board of Trustees' University Health Care Committee permanently revoked Dr. Kearney's clinical privileges at the beginning of the academic year, the University had sufficient grounds to revoke his tenure. Nevertheless, the University Health Care Committee chose to reaffirm Dr. Kearney's status as a tenured professor but without clinical privileges. In taking this step, the University Health Care Committee implicitly expressed an expectation of Dr. Kearney developing expertise as a researcher and, thus, making positive contributions to the University. The University assumed that Dr. Kearney would use the 2015-16 academic year to make the transition to his new role. Unfortunately, his behavior over this academic year casts serious doubt on whether Dr. Kearney is willing or competent to discharge his duties as a tenured professor who lacks clinical privileges.

First, as I related in my letters of November 15, 2015, December 23, 2015, February 17, 2016, and March 24, 2016, the University expects Dr. Kearney to submit to the Dean a detailed plan for making future contributions to the University in general and for becoming a productive researcher in particular. My March 24, 2016 letter contained detailed instructions as to the content of that plan. The University regards the development of this plan as a necessary first step

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toward making future contributions that would justify his status as a tenured full professor. To date, Dr. Kearney has failed to submit a plan that meets the Dean's expectations of detail and clarity. The University regards this failure as an act of insubordination and a neglect of duty. His failure also raises issues as to whether he is actually competent to fulfill his responsibilities as a tenured faculty member who lacks clinical privileges.

Second, the University recently has learned that Dr. Kearney is providing expert testimony in a medical malpractice case without obtaining the required approvals. This action represents a violation of University policy. As Dr. Kearney—like all faculty members—has a duty to follow all applicable laws, regulations, and policies, his refusal to follow the policies represents a neglect of duty.

Of course, these most recent examples of Dr. Kearney's neglect of duty and questionable competence come at a time when the University already had sufficient grounds to revoke in his tenure. As the University demonstrated in proceedings before the Medical Staff Executive Committee, an independent hearing panel of Dr. Kearney's peers, an appellate review panel of three trustees, and the University Health Committee, Dr. Kearney engaged in a wide variety of unacceptable behaviors over a number of years. Indeed, all four of those independent bodies *unanimously* concluded that Dr. Kearney's clinical privileges should be revoked. These behaviors, both individually and collectively, represent repeated violations of applicable laws, regulations, policies, and rules. Moreover, as the record unequivocally demonstrates, Dr. Kearney engaged in pervasive abusive and harassing behavior directed at patients, medical students, residents, nurses, and other staff members. In addition to being unethical and contrary to the professional standards, Dr. Kearney's behavior and attitude contributed to an "offensive and unacceptable" culture within the Department of Surgery that represents an "educational shortcoming" requiring immediate correction. Because Dr. Kearney—like all faculty members—has a duty to obey all applicable laws, regulations, policies, and rules, these numerous and repeated violations represent a continuing neglect of duty. Moreover, since Dr. Kearney testified he is incapable of changing his behavior, there are serious questions as to whether Dr. Kearney is competent to engage perform his duties as a tenured professor in either a clinical or non-clinical setting.

Given Dr. Kearney's repeated refusal to comply with the University's reasonable requests regarding a research plan, his defiance of university policy with respect to presenting expert testimony, and the previous behaviors that resulted in the permanent loss of clinical privileges, the University must consider whether to commence tenure revocation proceedings. As part of its consideration of whether to

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commence tenure revocation proceedings, the University is taking the following steps:

First, effective May 1, 2016, the University reduces Dr. Kearney's salary to \$43,500.00. This figure represents the state's portion of the Anticipated Annual Remuneration for a full professor in the College of Medicine. As Dr. Kearney generates no clinical income and has made no effort to contribute to the University during the 2015-16 academic year, the minimum salary is appropriate. Indeed, it is fundamentally unfair to pay Dr. Kearney more than his peers who are actually contributing.

Second, effective immediately, the University prohibits Dr. Kearney from engaging in outside consulting, serving as an expert witness, or attending Grand Rounds. All of these activities require the express permission of the Dean or others and Dr. Kearney has refused to respect those requirements.

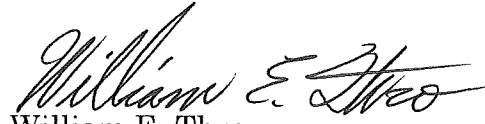
Third, pursuant to University of Kentucky Governing Regulation § X.B.1.f (2), the Dean of the College of Medicine and Dr. Kearney will meet on Friday, May 6, at 10:30 a.m. in Room 322 of the Charles T. Wethington Building . This meeting is mandatory for Dr. Kearney and he should rearrange his schedule to ensure his attendance. The purpose of this meeting will be discussions "toward mutual settlement" that will avoid tenure revocation proceedings. As Dr. Kearney's counsel, you are welcome to attend this meeting. However, if you or anyone other than Dr. Kearney attends, then the University's legal counsel will be present.

In closing, the University wishes to reiterate three points. First, Dr. Kearney's status as a tenured professor does not allow him to dictate the terms and conditions of his employment. Because Dr. Kearney lost his clinical privileges due to his own egregious behaviors, the University will not allow him to practice medicine in our hospitals, work for the University's health care competitors, pursue clinical research, or interact with medical students or residents in a teaching or clinical context. As my letters have emphasized repeatedly, the University will allow him to pursue non-clinical research, but expects him to develop a comprehensive research plan including external funding. Second, his tenure status does not entitle him to receive a salary while making no effort to contribute to the University. Third, Dr. Kearney's academic freedom does not exempt him from compliance with all applicable statutes, regulations, policies, and rules. The University hopes Dr. Kearney will recognize these realities. If not, the way forward is clear.

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If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. Thro". The signature is written in a cursive style with a large initial "W".

William E. Thro  
General Counsel

WET/ljs

cc: Provost Tracy  
Dean DiPaola