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*Counsel for Respondent,  
The Ohio State University*

## MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

### **I. INTRODUCTION**

Relator John C. Deal challenges Respondent, The Ohio State University's, response to a public records request, alleging that OSU refused to provide requested records. Deal requested that OSU "produce minutes of boards, committee, task forces, and other university units and organizations to show who is responsible for recommending and approving faculty appointments of Dr. Kathi Kemper." Complaint, p. 4. Deal's request sought information rather than public records maintained by OSU. Even if Deal's request could be construed as a proper public records request, the documents requested were released by OSU before and after Deal initiated the present action. Because OSU has produced the requested information or records, whichever way Deal's request is construed, this action is moot and should be dismissed.

### **II. STATEMENT OF FACTS**

On September 13, 2013, Julie Chicoine, Senior Assistant General Counsel for the OSU Wexner Medical Center, provided Deal with Dr. Kathi Kemper's employment offer letter. Respondent's Ex. A.<sup>1</sup> Over the course of six pages, the letter explains the terms and conditions of Dr. Kemper's employment at OSU as well as the process by which Dr. Kemper would receive her appointment as Executive Director of the Center for Integrative Medicine and a supplemental appointment as a Visiting Professor in the Department of Pediatrics at OSU. *Id.* The letter is signed by OSU Wexner Medical Center C.E.O., Dr. Steven Gabbe, OSU College of Medicine Department of Pediatrics Chair, Dr. Michael Brady, and Dean of the OSU College of Medicine,

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<sup>1</sup> See Section III.A., explaining why it is permissible for the Court to consider this additional evidence at this stage.

Dr. Charles Lockwood. *Id.* Those individuals recommended Dr. Kemper for tenure at OSU. Chicoine Affidavit ¶ 3.

Despite receiving the offer letter, Deal did not believe that OSU had provided him all the information he requested regarding Dr. Kemper's faculty appointment. Relator's Affidavit, ¶ 7. So, on September 15, 2013, Deal asked OSU to reproduce the employment offer letter<sup>2</sup> and went so far as to request, "if Dr. Kemper has not yet been granted tenure, is there a tenure committee that would listen to my concerns about her?" *Id.*

On December 5, 2013, Deal sent an additional email to Chicoine containing numerous requests, including an additional request related to Dr. Kemper. Complaint, Ex. A. Among the various requests contained in this email, Deal indicated that he was "interested to know how and by whom faculty appointments were recommended and approved with regard" to a number of employees.<sup>3</sup> *Id.* To that end, he requested that OSU conduct a search of "minutes of boards, committee, task forces, and other university units and organizations...to show who is responsible for recommending and approving faculty appointments" of three Medical Center employees, Dr. Glen Aukerman, Dr. Hari Sharma, and Dr. Kathi Kemper. *Id.*

On December 12, 2013, Chicoine sent an email to Deal explaining that the "Public Records Act does not obligate Respondent to conduct...research or [to] search...for records containing selected information" sought by Deal. Complaint, Ex. B. In this email, Chicoine also

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<sup>2</sup> Apparently, Deal had only received every other page of the offer letter. OSU provided the entire letter to Deal on September 16, 2013. Respondent's. Ex. A.

<sup>3</sup> Deal states that his goals are to understand the organization and governance of OSU's Center for Integrative Medicine and to understand the credentialing process as regards Dr. Kemper. Relator Affidavit, ¶ 10. Deal's purpose or goal in making the request is irrelevant. See, R.C. 149.43(B)(5); *see also, Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 10 (citing *State ex rel. Fant v. Enright*, 66 Ohio St.3d 186, 610 N.E.2d 997 (1993) ("[a] person may inspect and copy a 'public record' irrespective of his or her purpose for doing so."))

explained that the records requested by Deal were organized by date in order to allow Deal to make a request for a specific record. *Id.*

Thereafter, on January 10, 2014, Deal commenced this action pursuant to the Public Records Act, R.C. 149.43(C), alleging that OSU failed to respond to his request. Complaint, ¶¶ 9, 10. Specifically, Deal alleges that OSU refused “to provide the Relator with access to records showing who is responsible for recommending and approving faculty appointments of Dr. Kemper.” Complaint, ¶ 9. Deal’s prayer for relief seeks only two things: an order for OSU to “produce minutes of boards, committee, task forces, and other university units and organizations to show who is responsible for recommending and approving faculty appointments of Dr. Kathi Kemper”; and, award the costs of this action. Complaint, p. 4.

Subsequently, on January 17, 2014, OSU, through counsel, sent Deal a letter affording him another opportunity to revise his request by identifying the specific records that he was requesting based on the manner in which they are maintained and accessed by OSU. Respondent’s Ex. B.

On January 22, 2014, OSU, through counsel, again attempted to resolve Deal’s complaint. On this date, OSU sent an email and indicated that it “conducted an additional review of its records in the manner in which they are maintained” and found “no other public records responsive to the request which is the focus of [Deal’s] complaint.” Respondent’s Ex. C; see also, Chicoine Affidavit ¶ 5. Moreover, OSU’s email indicated that in taking “the opportunity to search for *the information* [Deal] requested,” OSU located “a copy of meeting minutes from the Board’s November 9, 2012 meeting.” *Id.* OSU attached this document to the email it sent to Deal. *Id.* Notably, the minutes only briefly mention Dr. Kemper. The minutes are over 150 pages in length of which only 3 sentences reference Dr. Kemper. OSU’s Board meeting minutes

are publicly available and have been since at least the time of Deal's initial public records request of December 17, 2012. Any member of the public with access to OSU's website can view those meeting minutes. *Id.*

### III. LAW AND ARGUMENT

#### A. Standard of Review

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. A court must accept the factual allegations of the complaint as true and "the plaintiff must be afforded all reasonable inferences possibly derived therefrom." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). "Additionally, in order to dismiss a complaint under Civ. R. 12(B)(6), it must appear beyond doubt that relator can prove no set of facts warranting relief." *State ex rel. Edwards v. Toledo City Sch. Dist. Bd. of Educ.*, 72 Ohio St.3d 106, 108, 647 N.E.2d 799 (1995).

Here, the Court may properly rely on extrinsic evidence because under Ohio law, when determining whether a case is moot, a court may consider documents outside of the complaint without converting a motion to dismiss into a motion for summary judgment. *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, ¶ 8; *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 15, 661 N.E.2d 170 (1996), citing *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993) (finding that, in deciding 12(b)(6) motions, courts may make "narrow exceptions for documents the authenticity of which are not disputed by the parties"). "In fact, 'an event that causes a case to be moot may be proved by extrinsic evidence outside the record.'" *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 227, 729 N.E.2d 1181 (2000) (finding that a court of appeals erred in converting a motion to dismiss to a motion for summary judgment because of

attachments showing mootness of the claim). In the public records mandamus context, this Court determined that an action was moot based on relator's admission that "it now has been provided with some of the records it requested." *State ex rel. Findlay Publ. Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996), citing *Neff*, 75 Ohio St.3d at 16.

**B. Deal's request for a writ of mandamus must fail.**

It is well established that relief in the form of mandamus is extraordinary relief. *State ex rel. DeDonno v. Mason*, 128 Ohio St.3d 412, 2011-Ohio-1445, 945 N.E.2d 511, ¶ 2. In order for a writ of mandamus to issue, a relator must establish three elements: (1) the relator has a clear legal right to the requested relief; (2) the respondent is under a clear legal duty to perform the requested act; and (3) the relator has no plain and adequate remedy at law. *State ex rel. Van Gundy v. Indus. Comm'n.*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13. However, a relator in a statutory public records mandamus action need not prove a lack of adequate remedy at law. *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580, 757 N.E.2d 357 (2001).

"[I]n general, providing the requested records to the relator in a public-records mandamus case renders the mandamus claim moot." *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Comms.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 43; *see also Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, 965 N.E.2d 282, ¶ 13. A relator bears the burden to submit "clear and convincing proof to the contrary." *Strothers*, 131 Ohio St.3d at ¶ 13; *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, ¶ 3 syllabus ("Relators in mandamus cases must prove their entitlement to the writ by clear and convincing evidence."). To be sure, a mandamus complaint is moot even if the respondent produces the requested records *after* the mandamus action is filed. *State ex rel. Cincinnati Enquirer v. Ronan*,

124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶ 4. Further, a writ of mandamus will not issue to compel a vain act. *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, ¶ 38.

Deal does not have a clear legal right to the relief he seeks because his request for OSU to “produce minutes of boards, committee, task forces, and other university units and organizations to show who is responsible for recommending and approving faculty appointments of Dr. Kathi Kemper” is a request for information, not records. A governmental office has no duty to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records. *State ex rel. White v. Goldsberry*, 85 Ohio St.3d 153, 707 N.E.2d 496 (1999). Nor must the office “seek out and retrieve those records which would contain the information of interest to the requester.” *State ex rel. Fant v. Tober*, 8th Dist. No. 63737, 1993 WL 173743 (Apr. 28, 1993); *aff’d* 68 Ohio St.3d 117, 623 N.E.2d 1202 (1993). That is, a public office is under no obligation to search for records containing selected information. *State ex rel. Thomas v. Ohio State University*, 71 Ohio St.3d 245, 246, 643 N.E.2d 126 (1994).

Similar to the relator in *Thomas*, Deal asked OSU to search for records containing selected information. On December 5, 2013, Deal submitted a request for “minutes of boards, committee, task forces, and other university units and organizations...to show who is responsible for recommending and approving faculty appointments” of three OSU employees, including Dr. Kemper. Deal’s request appears somewhat narrower than that of the relator in *Thomas*. However, it still demands that OSU search for records containing selected information; that is, information showing who is responsible for recommending and approving Dr. Kemper’s faculty appointment. As Chicoine explained to Deal on December 12, 2013, OSU organized its minutes

by date, not in the manner Deal requested. In turn, locating minutes related specifically to Dr. Kemper would require OSU to comb through all board, committee, task force, and other university units and organizations minutes to find those minutes that not only specifically reference Dr. Kemper, but also show who is responsible for recommending and approving her faculty appointment. The Public Records Act does not require OSU to perform such acts; that is, to seek out and retrieve the records that would contain the information of interest to Deal.

Despite the applicability of *Thomas* and its direction that OSU need not search records for selected information, OSU still searched for records containing the information Deal desired and provided that information to Deal. Chicoine Affidavit, *passim*. On September 13, 2013, Chicoine provided Deal with Dr. Kemper's employment offer letter. Over the course of six pages, the letter explains the terms and conditions of Dr. Kemper's employment at OSU as well as the process by which Dr. Kemper would receive her appointment as Executive Director of the Center for Integrative Medicine and a supplemental appointment as a Visiting Professor in the Department of Pediatrics at OSU. In addition, on January 22, 2014, OSU sent an email to Deal that contained a copy of meeting minutes from OSU's Board's November 9, 2012 meeting which were obtained from OSU's publicly accessible website. There are no other known records responsive to Deal's request. Chicoine Affidavit, ¶ 6.

Even assuming Deal's request is for public records rather than purely for information, OSU satisfied its obligations under the Public Records Act, R.C. 149.43, because it has provided all known documents potentially responsive to Deal's request and there is no remaining corresponding relief that this Court may order. See *Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530 (writ of mandamus seeking records will be denied when evidence

demonstrates that records do not exist). Accordingly, Deal's action in mandamus is moot and this Court should dismiss his complaint.

**C. Deal is not entitled to recover the costs for filing this action or attorney fees.**

Since Deal's action is moot and a writ should not issue, he is not entitled to an award of costs for filing his action. R.C. 149.43(C)(2)(a) ("If the court *issues a writ of mandamus*... the court shall determine and award to the relator all court costs.") (Emphasis added).

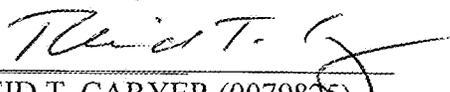
Moreover, Deal did not request attorney fees and he would not be entitled to them. To be sure, this Court recently reiterated that "the plain language of R.C. 149.43(C)(2)(b) conditions all attorney-fee awards on the court's having issued a judgment ordering compliance with the public-records law." *State ex rel. DiFranco v. S. Euclid*, Slip Opinion No. 2014-Ohio-538, ¶ 18. Like South Euclid, OSU produced all pertinent documents before any court order issued here. An attorney fee award is improper. See, also, *Thomas*, 71 Ohio St.3d at 251 (pro se litigants are not entitled to attorney fees under R.C. 149.43); *State ex rel. Fant v. Mengel*, 62 Ohio St.3d 197, 580 N.E.2d 1085 (1991) (same).

**IV. CONCLUSION**

For these reasons, OSU respectfully requests that this Court dismiss Deal's complaint.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General

  
REID T. CARYER (0079825)  
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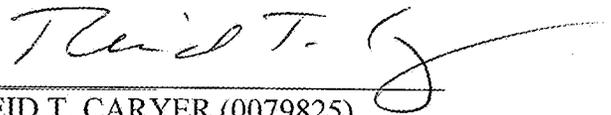
*Counsel for Respondent,  
The Ohio State University*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Motion to Dismiss of Respondent The Ohio State University* was served by regular U.S. mail, postage prepaid, on March 13, 2014, upon the following:

JOHN C. DEAL (0020223)  
2575 Wexford Rd.  
Columbus, Ohio 43221-3215

*Relator Pro Se*

  
\_\_\_\_\_  
REID T. CARYER (0079825)  
Assistant Attorney General

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	:	
JOHN C. DEAL,	:	
	:	
Relator,	:	Case No. 2014-0041
	:	
v.	:	
	:	Original Action in Mandamus
THE OHIO STATE UNIVERSITY	:	
	:	
Respondent.	:	

AFFIDAVIT OF JULIE E. CHICOINE

STATE OF OHIO            )  
  ) SS:  
COUNTY OF FRANKLIN    )

Affiant Julie E. Chicoine, being first duly sworn, under oath states:

1. I am over eighteen (18) years of age and am competent to testify to the matters set forth herein from my personal knowledge.
2. I am currently employed as Senior Assistant General Counsel for the OSU Wexner Medical Center.
3. On September 13, 2013, I provided John C. Deal with Dr. Kathi Kemper’s employment offer letter. See Respondent’s Ex. A. Over the course of six pages, the letter explains the terms and conditions of Dr. Kemper’s employment at OSU as well as the process by which Dr. Kemper would receive her appointment as Executive Director of the Center for Integrative Medicine and a supplemental appointment as a Visiting Professor in the Department of Pediatrics at OSU. *Id.* The letter is signed by OSU Wexner Medical Center C.E.O., Dr. Steven Gabbe, OSU College of Medicine Department of Pediatrics Chair, Dr. Michael Brady,

and Dean of the OSU College of Medicine, Dr. Charles Lockwood. Thus, the letter provided Deal with the names of the individuals who recommended Dr. Kemper for tenure at OSU.

4. On January 17, 2014, OSU, through counsel, sent Deal a letter affording him another opportunity to revise his request by identifying the specific records that he was requesting based in the manner in which they are maintained and accessed by OSU. See Respondent's Ex. B.

5. On January 22, 2014, OSU, through counsel, again attempted to resolve Deal's complaint. On this date, OSU sent an email and indicated that it "conducted an additional review of its records in the manner in which they are maintained" and found "no other public records responsive to the request which is the focus of [Deal's] complaint." See Respondent's Ex. C. Moreover, OSU's email indicated that in taking "the opportunity to search for *the information* [Deal] requested," OSU located "a copy of meeting minutes from the Board's November 9, 2012 meeting." *Id.* OSU attached this document to the email it sent to Deal. *Id.* Notably, the minutes only briefly mention Dr. Kemper. The minutes are over 150 pages in length of which only 3 sentences reference Dr. Kemper. OSU's Board meeting minutes are publicly available and have been since at least the time of Deal's initial public records request of December 17, 2012. Any member of the public with access to OSU's website can view those meeting minutes. *Id.*

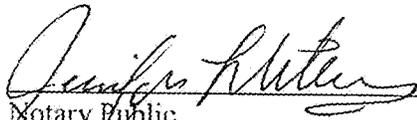
6. I have been responsible for conducting searches for records and information in response to John Deal's request to "produce minutes of boards, committee, task forces, and other university units and organizations to show who is responsible for recommending and approving faculty appointments of Dr. Kathi Kemper." After conducting those searches, to the best of my knowledge and belief, OSU has produced all known public records potentially responsive to that request.

7. Attached to this affidavit are true and accurate copies of Respondent's Exhibits A, B, and C. Those exhibits are maintained in the ordinary course of business by OSU.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Julie E. Chicoine

Sworn to and subscribed before me, this 12<sup>th</sup> day of March, 2014.

  
\_\_\_\_\_  
Notary Public

My commission expires:



JENNIFER L. WHITNEY  
Notary Public, State of Ohio  
My Commission Expires 09-12-17

Mr. John Deal  
2575 Wexford Rd.  
Columbus, OH 43221-3215

Re: Follow Up to Information Inquiry

COPY

Dear Mr. Deal,

This correspondence serves to follow up on our July 26, 2013 meeting where you inquired as to whether OSU could locate faculty appointment letters for Professor Emeritus Hari Sharma, Clinical Assistant Professor David Dehui Wang, Professor Glen Aukerman, and Professor Kathi J. Kemper. In response, I have located and am forwarding copies (attached) of documents that I believe answer your question.

As we discussed during our meeting, OSU has previously responded to your public records request and thus, this correspondence and attachments concludes this matter.

You may also recall during our March meeting with Chief Medical Officer Dr. Andy Thomas and during our July 26<sup>th</sup> meeting, Dr. Thomas had indicated that he is more than willing to meet with and/or facilitate any meetings with family members regarding the patient that you mentioned to us. Please feel free to convey this information.

Sincerely,

Julie E. Chicoine,

Cc: Lauren Lubow

RESPONDENT'S  
EXHIBIT

A

forward

Chicoine, Julie

Sent: Monday, September 16, 2013 11:50 AM

To: 'John C. Deal'

Attachments: Scanned from a Xerox Multifunction Device.pdf

Per your email

Julie E. Chicoine, Esq.  
Senior Assistant General Counsel  
Wexner Medical Center at The Ohio State University  
650 Ackerman Rd. | Suite 200 | Columbus, OH 43202  
614-293-2007 | ☐ 614-366-2089 | [julie.chicoine@osumc.edu](mailto:julie.chicoine@osumc.edu)

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-----Original Message-----

From: [DoNotReply@osumc.edu](mailto:DoNotReply@osumc.edu) [mailto:[DoNotReply@osumc.edu](mailto:DoNotReply@osumc.edu)]

Sent: Monday, September 16, 2013 12:41 PM

To: Chicoine, Julie

Subject: Scanned from a Xerox Multifunction Device

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Device.

Attachment File Type: pdf, Multi-Page

Multifunction Device Location:

Device Name: XRX9C934E1EE6CA

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**Wexner  
Medical  
Center**

September 25, 2012

Kath J. Kemper, MD, MPH  
Center for Integrative Medicine  
Wake Forest University School of Medicine  
Winston-Salem, North Carolina 27157

Dear Dr. Kemper:

On behalf of the College of Medicine of The Ohio State University (OSU) Wexner Medical Center (WMC), it is our great pleasure to offer you the position of Executive Director of the Center for Integrative Health (Center). In this role, you will report to the Senior Vice President for Health Sciences (SVP) and the Dean of the College of Medicine (Dean). In addition, you will also be appointed to a faculty position as a Visiting Professor in this Department of Pediatrics at The Ohio State University ("Department").

This offer is contingent upon final approval by the Dean of the College of Medicine, the Senior Vice President for Health Sciences and the Board of Trustees of The Ohio State University ("Board"). Your employment is subject to the sufficiency of funding by the General Assembly of the State of Ohio for the University. Your employment is also subject to all rules, regulations, and policies of The Ohio State University, the Board, the College and your Department.

Your initial appointment will be as a Visiting Professor, but we will immediately begin the process for appointment as a tenured professor. In the event that the process is not completed prior to your arrival, you will join us as a Visiting Professor until the process is completed, and you are approved for appointment as Professor with tenure. In the event that the process is completed prior to your arrival and you are approved for appointment as Professor with tenure, you will join us as a Professor with tenure. Enclosed is a copy of the College's promotion and tenure policy.

Volumes 2 and 3 of the OAA Policies and Procedures Handbook contain important information for faculty. This is available at the Office of Academic Affairs website, which you may visit at [http://oaa.osu.edu/OAAP\\_PHandbook.php](http://oaa.osu.edu/OAAP_PHandbook.php)

Your appointment as Executive Director of the Center will be for a four-year term commencing on or before October 1, 2012. The Dean, in consultation with the SVP and the Chair of your Department, will review the financial performance of the Center and all clinical and academic programs on an annual basis. Your appointment as Executive Director is subject to satisfactory performance and is at the discretion of the Dean and Senior Vice President. You will be eligible for re-appointment upon review by the Dean as established by University policies. This re-appointment review will be conducted in the fourth year of your appointment, and will follow established University policies. In the event that you are re-appointed to subsequent term(s), the re-appointment review will be conducted in the fourth year of each subsequent term.

Steven G. Cobbe, MD  
Senior Vice President  
for Health Sciences  
CEO, Wexner Medical Center

200 Melting Hall  
370 West 5th Avenue  
Columbus, OH 43210

Phone: 614.247.4477  
Fax: 614.282.1321  
E-mail: Steven.Cobbe@osumc.edu

In addition to your faculty appointment, you will have a physician appointment and participate in the Nationwide Children's Hospital Pediatric Academic Associates (PAA). The details of that compensation will be outlined in a separate physician employment agreement.

In accordance with the Disaster Preparedness and University State of Emergency Policy 6.17, this position has been designated as an essential position. A University State of Emergency is in effect when the University President acts to declare such a state due to catastrophic events such as natural or human-made disasters that would result in a prolonged closure of the University. In addition, your position during a University Emergency Closing has been designated as essential. This designation is in accordance with the Emergency Closing Policy 6.16 for one or two day closures (e.g., snow days).

As a faculty member in the Department of Pediatrics, you are considered essential to the operations of the health center. As such, you will be required to report to work during any University emergency closure, including severe weather. If you are unable to report to work, you will be expected to call in and report a vacation day.

#### **DUTIES AND RESPONSIBILITIES**

The Dean and/or Department chair are responsible for determining your work assignments. Each faculty member is expected to perform over the full range of responsibilities in the areas of teaching, research and service. Clinical services are a component of your faculty responsibility, with or without the presence of a trainee. Your responsibilities in the areas of teaching, research and service include, but are not limited to the following areas.

#### **TEACHING/RESEARCH/SERVICE**

These duties will be determined through discussions with your department Chair and the Dean.

#### **ADMINISTRATIVE APPOINTMENTS**

You will be appointed as a member of the:

- College Assembly
- Leadership Council

#### **FINANCIAL**

Your annual compensation (salary) for your faculty position with The Ohio State University will be \$270,000 and will be paid to you in twelve substantially equal monthly installments. Your guaranteed annual University base salary will be \$75,000. It is expected that within three years, you will generate sufficient funds through extramural research funding to support (20%) of your annual compensation (salary). Based on your past record of achievement, we have no doubt that you will be able to achieve this goal. Your faculty position is subject to the Rules of the University Faculty.

In addition, you will be included in the Medical Center's STEP bonus program, which calls for a performance bonus of up to 30% of your salary.

You should understand that this is a full-time offer with 100 percent of your professional efforts being devoted to the Center.

In addition, to facilitate your transition, the University will reimburse you for documented reasonable moving expenses up to \$20,000 in accordance with the University's Relocation Expenses Policy 2.30 and will provide for one house-hunting trip to Columbus after your acceptance of our offer.

#### **BENEFITS**

Enclosed is the Human Resources form explaining that your employment is in a job not covered by Social Security. This form must be signed and returned to the Department no later than your first day of work. For current benefits information, please visit <http://hr.osu.edu/benefits>

#### **ADMINISTRATIVE SUPPORT**

Designated individuals will provide human resources and program manager support. Website development and e-newsletter support will be coordinated through the COM office of communication. An additional budget of \$10,000 will be provided for supplies, dues, travel and consortium expenses as needed. You will also be provided with appropriate faculty office space and secretarial support.

We anticipate that your primary office may be at our Kenny Road facility:

OSU Center for Integrative Medicine  
2000 Kenny Road  
Columbus, Ohio 43221  
Phone: (614) 293-9777

#### **ONBOARDING**

As with all new leaders you will participate in an on-boarding and mentorship program that is developed around your specific needs. This will include an Academic mentor and an Administrative liaison.

We would also like you to form an internal advisory group that would include appropriate representation from the Pediatrics, Internal Medicine and Cancer programs among others.

#### **RECRUITMENT**

Within the first 90 days, you will be expected to develop a proposed staffing and financial plan to meet your goals/vision. Members of the planning team will be assigned to assist you with the development and approval process.

Such business plan could include the positions, supplies and equipment incorporated in the vision/outline you forwarded staged over an appropriate

timeframe including incremental resources generated from clinical, educational and research activities. We would like to see the Psychological (guided imagery, biofeedback), Integrative Oncologist, and Pain/Palliative Care clinician positions included early in the plan period. In addition, we would provide for an Associate Director of Education position (80% FTE) and understand that you have potentially already identified a current OSU employee for this role.

We anticipate an investment of no less than \$3.0 million over the initial four year period pending the approved business plan.

#### **MARKETING AND DEVELOPMENT**

We will provide resources out of the Marketing and Strategic Communications office to assist with website and newsletter development. This will ensure consistent messaging of the highest quality in accordance with OSU standards.

You will be able to collaborate with the OSU Development office to secure endowment and/or other gift support for the benefit of the center. A development officer will be designated for you to work with.

#### **ADDITIONAL REQUIREMENTS**

##### **BOARDS**

You will be expected to provide documentation that you have passed your boards and subspecialty boards (if appropriate). You will also be required to maintain your board certification(s).

##### **MEDICAL LICENSURE AND CREDENTIALING**

Your faculty appointment is dependent upon you having applied for and received an Ohio Medical License. It is also dependent upon you having completed credentialing applications for insurance carriers and you having been approved for adequate insurance coverage. In addition, it is dependent upon you receiving privileges at Nationwide Children's Hospital, The Ohio State University Hospitals and/or The Arthur G. James Cancer Hospital and the Richard J. Solove Research Institute.

Under separate cover from the Department, you will receive applications for medical staff appointment, medical insurance credentialing materials and a malpractice insurance application. Instructions will be provided in the packet of materials. You will need to initiate the medical staff credentialing process as well as the medical insurance credentialing process upon receipt of the application materials from the Department.

Once you accept this offer, it will be very important for you to apply to the State of Ohio for medical licensure as soon as possible. Write directly for the proper forms to:

Medical Board, State of Ohio  
30 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, OH 43216-8127

**MISCELLANEOUS**

This letter 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 letter 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 your lifetime, but in no event later than the expiration of your term of employment with the University, (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. Nothing in this letter shall be construed as the guarantee of any particular tax treatment to you, and the University shall not have any liability with respect to any failure to comply with the requirements of Section 409A of the Code.

The University is required by federal law to verify the identity and work authorization of all new employees. Accordingly, this offer is contingent upon such verification. If you are a citizen of the United States or a permanent resident, you will need to provide the Department with the appropriate documentation. If you are neither, Human Resources must verify your immigration documents before your employment officially commences. The University's Office of International Affairs may also be able to assist you with visa matters. As such, it is important that you let us know of any special visa circumstances as soon as possible.

In accordance with the Ohio Revised Code, Sections 2909.33 and 2909.34, final candidates must receive a copy of the Terrorist Exclusion List ("TEL") and must complete the Declaration Regarding Material Assistance/Non-assistance to Terrorist Organizations ("DMA") form. Please complete and submit the DMA form to the Department at the same time that you sign and return this offer letter.

Ohio State faculty and staff are covered by Ohio Ethics Law for public officials and state employees, and accordingly must receive and acknowledge a copy of this law. A copy of the Ohio Ethics Law is attached here to along with the acknowledgement. Please complete and submit the Ohio Ethics Law form to the Department at the same time that you sign and return this offer letter.

It is exceedingly important that you take immediate steps to obtain all necessary licenses, apply for the applicable Drug Enforcement Agency ("DEA") license, obtain proof of required immunizations and take all other steps necessary for your medical staff appointment at The Ohio State University Medical Center and The Arthur G. James Cancer Hospital and the Richard J. Solove Research Institute and for credentialing through the Department because a failure to or inability to do so will terminate your offer of employment and/or employment with the University.

In accordance with the OSU Medical Center Policy 02-47, "Self-Disclosure of Criminal Convictions and Background Check", a background check will be conducted on you. Your offer is contingent upon the verification of credentials and other

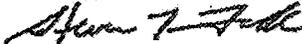
Information required by law and/or Medical center and/or University policies, including but not limited to a criminal background check.

Please sign this letter, complete the enclosed forms within two weeks of the date of this letter, and return them in the enclosed envelope. This will ensure timely payroll processing and allow the University to begin the process of enrollment in University benefits programs. Please contact our administrative director at the address below if you have any questions.

Amy Pelzer, Administrator, Pediatrics  
700 Children's Dr  
Columbus OH 43205  
(614) 722-4653  
[amy.pelzer@osu.edu](mailto:amy.pelzer@osu.edu)

Kathi, we believe the opportunities for you at the Wexner Medical Center, Nationwide Children's Hospital, and the Ohio State University are unique and will enable you to develop one of our country's best and most respected programs in integrative medicine. We will do all we can to support your important work. Please do not hesitate to call on us if there's anything we can do to help during your transition.

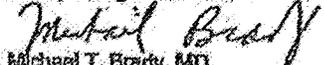
Sincerely,



Steven G. Gabba, MD  
Senior Vice President for Health Sciences  
Chief Executive Officer, Wexner Medical Center



Charles J. Lockwood, MD  
Vice President for Health Sciences  
Dean, College of Medicine



Michael T. Brady, MD  
Chair and Professor, Department of Pediatrics

cc: Robert Bornstein, PhD, Senior Associate Dean of Academic Affairs, College of Medicine and Public Health  
E. Christopher Ellison, MD, Chief Executive Officer, Faculty Group Practice, Chair, Department of Surgery  
Hagop Mekhjian, MD, Senior Associate Vice President and Chief Medical Officer

Please indicate your acceptance of this offer by signing below and returning a copy of this letter with your employment packet.



Kathi J. Kemper MD, MPH



**MIKE DEWINE**  
\* OHIO ATTORNEY GENERAL \*

Education Section  
Office 614-644-7250  
Fax 614-644-7634

30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

January 17, 2014

VIA CERTIFIED MAIL

91 7199 9991 7030 3759 4510

John C. Deal, Esq.  
2575 Wexford Rd.  
Columbus, OH 43221

RE: *State ex rel. Deal v. The Ohio State University*  
Case No. 2014-0041

Mr. Deal:

On January 14, 2014, The Ohio State University received service of a complaint for the above referenced case. The undersigned attorneys will be representing Ohio State. In a good faith effort to resolve this matter, Ohio State is willing to provide you yet another opportunity to revise your December 5, 2013 request<sup>1</sup> so that it identifies records in the manner in which they are maintained by Ohio State and accessed in the ordinary course of its duties. If you desire to revise your request, please contact myself or my co-counsel, Renata Staff, to arrange a time to talk. If you have any other questions, please do not hesitate to contact my office.

Sincerely,

MIKE DEWINE  
Ohio Attorney General

Reid T. Caryer  
Assistant Attorney General  
Education Section

Renata Y. Staff  
Assistant Attorney General  
Constitutional Offices Section

RESPONDENT'S  
EXHIBIT

B

<sup>1</sup> Your Complaint seeks relief regarding one part of your December 5, 2013 letter, that is the request for "minutes of boards, committee, task forces, and other university units and organizations...to show who is responsible for recommending and approving faculty appointments of [Dr. Kemper]."

## Reid T. Caryer

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**From:** Reid T. Caryer  
**Sent:** Wednesday, January 22, 2014 1:55 PM  
**To:** John C. Deal (jdeal@columbuscounsel.com)  
**Cc:** Renata Y. Staff  
**Subject:** State ex rel. Deal v. The Ohio State University, No. 2014-0041 (Ohio Supreme Court)  
**Attachments:** 2. FINAL\_November9,2012BOTMeeting.PDF

Mr. Deal,

After speaking with my client, we would like to propose using the Court's mediation process to reach a resolution. If you are amenable, we will file a joint request with the Court to assign the case to mediation. It is our understanding that the Court's rules of practice permit a single party to request mediation which we will most likely do in the event you have some objection to using the Court's mediation process. We intend to file the request before the end of this week. We look forward to your response.

We would also like to circle back to the request that is the focus of your complaint if, per chance, the following information resolves your complaint. As far as we can tell from your complaint, you are only seeking access to "minutes of boards, committee, task forces, and other university units and organizations ... to show who is responsible for recommending and approving faculty appointments of [Dr. Kemper]." The University conducted an additional review of its records in the manner in which they are maintained. Following that review, it appears there are no other public records responsive to the request which is the focus of your complaint.

Nevertheless, the University also took the opportunity to search for *the information* you requested, something the Public Records Act does not require the University to do. Attached is a copy of meeting minutes from the Board's November 9, 2012 meeting. The minutes briefly mention Dr. Kemper but do not speak to a recommendation or appointment. The minutes are over 150 pages of which only 3 sentences on page 25 reference Dr. Kemper. I'm also providing this website link to the minutes - [http://trustees.osu.edu/assets/files/minutes/2013/2.%20FINAL\\_November9,2012BOTMeeting.pdf](http://trustees.osu.edu/assets/files/minutes/2013/2.%20FINAL_November9,2012BOTMeeting.pdf). The University's Board meeting minutes are publicly available and have been since at least the time of your initial public records request of December 17, 2012. Any member of the public with access to the University's website can view those meeting minutes.

Again, we look forward to your response regarding the use of mediation.

Reid



Reid T. Caryer  
Assistant Attorney General - Education Section  
Office of Ohio Attorney General Mike DeWine  
Office number: 614-644-7250  
Fax number: 614-644-7634  
[Reid.Caryer@OhioAttorneyGeneral.gov](mailto:Reid.Caryer@OhioAttorneyGeneral.gov)

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RESPONDENT'S  
EXHIBIT

C