

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

Rylan Brantl,)	
)	
)	
v.)	Case No. _____
)	
The Curators of the University of Missouri,)	JURY TRIAL DEMANDED
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)	
)	

PLAINTIFF'S COMPLAINT

COMES NOW, Plaintiff Rylan Brantl, for his Complaint, and states as follows:

1. Plaintiff Rylan Brantl (“Dr. Brantl”), is a United States citizen, and a resident of the State of North Dakota. He was continuously employed, full-time, by the Curators of the University of Missouri, University of Missouri-Columbia as a neurosurgery resident at the School of Medicine (hereinafter “SOM”) from July 1, 2008 to June 30, 2013. He presently resides in Bismarck, North Dakota and is employed by Heart of America Medical Center in Rugby, North Dakota as a physician general practitioner.

2. Under section 172.010 et seq., RSMo., and pursuant to sections 9(a) and 9(b) of Article IX of the Missouri Constitution, the University of Missouri, an institution of higher education, was incorporated and created as a body politic to be known by the name “The Curators of the University of Missouri” (hereinafter “Curators” or “University”).

3. Defendant University is a citizen of the State of Missouri for purposes of diversity jurisdiction in that it has the power to sue and be sued, complain and defend in all courts, it exercises autonomy over its operations, it does not perform traditional government functions, and any judgment against it would not be paid from the state treasury.

4. Original federal question jurisdiction of this Court is proper pursuant to Article

III, Section 2 of the United States Constitution and 28 U.S.C. §§ 1332 which provides that federal courts shall have jurisdiction where there is diversity of citizenship and the amount in controversy is greater than \$75,000.

5. On or about July 1, 2008, Plaintiff was extended an offer of employment as medical resident in the Department of Surgery.

6. Plaintiff accepted Defendant University's offer.

7. Thereafter, Dr. Brantl was accepted in the Neurosurgery Residency Program at the University at which time he signed a Resident Contract for the first year of residency. The Neurosurgery Program is a six-year program and residents generally enter into a new Resident Contract with the University each year.

8. Subsequently, Dr. Brantl and the University entered into a new residency agreement ("Agreement") each year for his second through fourth years of residency. (A copy of Plaintiff's residency contract for the second and third years of his medical residency is attached as Exhibit A to the complaint and incorporated by reference herein.)

9. Plaintiff successfully completed his first three residency years (i.e. PGY1, PGY2, PGY3) and was promoted to PGY 4.

10. Plaintiff's appointment was subject to all rules, orders and regulations of the University and University of Missouri Health Care, the Medical Staff Bylaws, and the Rules and Regulations of the Hospitals and Clinics.

11. Dr. Brantl's appointment formed an enforceable contract of employment with terms and conditions of employment contained in Defendant University's Rules and Regulations, Program Manual and GME and ACGME Policies and Program Requirements.

12. Plaintiff had a valid expectancy that his continued employment with Defendant

University and successful completion of the Neurosurgery Residency would be based on the Collected Rules and Regulations, and on the policies, guidelines and criteria promulgated by Defendant University, its School of Medicine (“SOM”), and its Graduate Medical Education (hereinafter “GME”) Policies and the ACGME Program Requirements.

13. Dr. N. Scott Litofsky (hereinafter “Litofsky”) was the program director of the neurosurgery residency program at The University of Missouri, at all time relevant herein.

14. Defendant University’s SOM and University Hospitals and Clinics commit to residents that they are accountable for addressing resident concerns and issues at the local level.

15. Defendant University’s Neurosurgery Resident Program under the auspices of its GME is accredited by the Accreditation Council of Graduate Medical Education (hereinafter “ACGME”) and subject to its common program requirements in training and preparing resident physicians. The requirements set the context within defendant University’s clinical learning environment for development of the skills, knowledge and attitudes necessary to take personal responsibility for the individual care of patients.

16. ACGME program requirement VI.B.6 requires that the Neurosurgery Program provide a professional, respectful, and civil environment that is free from mistreatment, abuse, or coercion of students, residents, faculty and staff.

17. ACGME program requirement VI.F.1 requires that the Neurosurgery Program’s resident’s clinical and educational work hours must be limited to no more than 80 hours per week, averaged over a four-week period, inclusive of all in-house clinical and educational activities, clinical work done from home, and all moonlighting.

18. Defendant University’s Neurosurgery Program violated this requirement due to a shortage of residents that lead to regular and significant violations of the Program Requirements

that, “duty hours must be limited to 80 hours per week, averaged over a four-week period, inclusive of all in-house call activities and all moonlighting, ” and to “adjust schedules as necessary to mitigate excessive service demands and/or fatigue,” and “monitor the need for and ensure the provision of back up support systems when patient care responsibilities are unusually difficult or prolonged.” Litofsky and other in GME threatened Dr. Brantl and other residents when they reported duty hours that were truthful and therefore resulted in reported duty hours violations.

19. Defendant University violated ACGME Program Requirements regarding program evaluation that states “residents and faculty must have the opportunity to evaluate the program confidentially and in writing at least annually” and “the program must use the results of residents’ assessments of the program together with other program evaluation results to improve the program,” and “If deficiencies are found, the program should prepare a written plan of action to document initiatives to improve performance,” and “the action plan should be reviewed and approved by the teaching faculty and documented in meeting minutes.”

20. Multiple concerns were raised by residents, including Dr. Brantl, in semi-annual program evaluations and these concerns were addressed. Instead, residents were threatened, harassed and scolded as a result of the ACGME annual resident surveys. In December of 2012, Litofsky gave a lecture entitled, “Miasma in the Division of Neurosurgery.” This lecture was a public scolding and threats against the neurosurgery residents. In that lecture, he went through the results of the previous year’s ACGME resident survey including citing to specific resident quotes and proceeded to make arguments in a demeaning and belittling fashion as to why those assessments were false. He also made threatening comments including, “If you are unhappy there is the door.”

21. Defendant University's GME Policies and Procedures are incorporated by reference in the residency agreements between the University and Dr. Brantl. Additionally, the Common Program Requirements and Institutional Requirements of the ACGME are incorporated by reference in the University's GME Policies and Procedures. Defendant University failed in many respects, as outlined below and in paragraphs 16 through 20, to comply with its own policies and procedures and the ACGME Common Program Requirements and Institutional Requirements (hereinafter collectively "ACGME Requirements") including:

- a. Failing to address the concerns raised by Dr. Brantl that the residency program was a hostile environment created by Litofsky characterized by mistreatment, abuse, threats, and coercion of him and other residents; and
- b. Failing to put him in contact with the GME Office of the Ombudsman and failing to provide him with a mentor, educational assistance, and monthly feedback when he was placed on probation; and
- c. In considering improper, false and potentially defamatory statements in making its decision to require Dr. Brantl to repeat the 4th year of his residency; and
- d. Violating its grievance policy by failing to provide a fair and unbiased grievance procedure as alleged in greater detail, *infra*; and
- e. Retaliating against Dr. Brantl for raising concerns regarding his treatment, pointing out instances of fraud pertaining to Medicare billing and medical records, and challenging his treatment in, and decisions made by, the neurosurgery residency program.

22. In doing so, defendant University breached its contract with Dr. Brantl.

23. Defendant University's GME program in Neurosurgery was put on probation in April 2009 by ACGME as a result of lack of faculty scholarship, cases, resident cases and the

percentage of residents passing the primary written Board examination.

24. As a result of the ACGME probation, the neurosurgery program changed its policy so that residents did not take the ABNS Board examination for credit until the PGY3 year.

25. Dr. Brantl was not afforded adequate opportunities to progress surgically with Litofsky until his PGY-3 year; just prior to the board examination in March of that year.

27. Litofsky told Dr. Brantl on multiple occasions he did not believe Dr. Brantl could pass the ABNS board examination.

28. Dr. Brantl took the ABNS Board Examination in his PGY2 year for the first time in 2010 for “self-assessment” because junior neurosurgery residents typically took the examination prior to taking it for credit as there is no separate “in-training exam” for neurosurgery as there is for other residencies.

29. Dr. Brantl scored a 170 which was over 100 points under the passing score of 286, but was better than several previous junior resident scores at this level of training in the University’s surgical residency program.

30. Dr. Brantl took the ABNS Board Examination a second time in 2011 for credit and scored 319, which was considerably above the passing score of 286. This score was comparable to scores achieved by other recent residents from the program at the University of Missouri. Dr. Brantl is therefore “written board certified” in neurosurgery.

31. Dr. Brantl took the ABNS Board Examination a third time in 2012, because he was required to retake it by Litofsky despite being written board certified in neurosurgery.

32. Upon knowledge and belief, only one other surgical resident at the University of Missouri in recent times has been required to retake the ABNS board examination once he/she

has passed the examination for credit. C.P. Paullus stated to Dr. Brantl on numerous occasions that he also disputed being required to retake the exam, did not study, and did not pass the exam on the retake. However, that situation was never used by Litofsky to demean and criticize Dr. Paullus' performance and rank.

33. Upon knowledge and belief, no surgical resident at the University of Missouri was involuntarily dismissed from the surgical residency program after passing the ABNS board examination for credit.

34. ACGME and the American Medical Association recognize six core competencies – patient care, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism and systems-based practice. Prior to being placed on probation, Dr. Brantl had never been subjected to discipline, pursuant to GME Policies GME-01 or GME-02, or told by his program director Litofsky, or any other attending physician that he had deficiencies in any of the six core competencies.

35. Between July 2009 and December 2011, Dr. Brantl was rated average or better in the six core competency areas.

36. Dr. Brantl was not given appropriate opportunities for progression, namely with surgical procedures, and he was treated inequitably and unfairly by Litofsky.

37. The residency environment created by Litofsky was hostile and not conducive for education or appropriate resident progression in that Litofsky frequently subjected Dr. Brantl to demeaning and unjustified comments that he was unsuitable for the neurosurgery residency program.

38. Dr. Brantl was rated by Litofsky on or about January 11, 2011. Even though he was rated as average or above average on the six core competency areas, he was informed that

he was now on probation and informed that he must achieve four criteria.

39. Contrary to the requirements of GME-01 and the Policy to Address Resident Concerns, prior to being placed on probation, Dr. Brantl did not receive any letter of warning or probation letter, required documentation for any academic efficiency, any reference to the GME Ombudsman and he was not referred to the ombudsman at the time he was placed on probation, Dr. Brantl was not appointed a mutually agreed upon faculty advisor or mentor at that time, and no specific probationary period was specified in the notice of probation.

40. Dr. Brantl met the four criteria, but his probation was not removed. He was never informed that he failed to meet the four criteria or how he was deficient in meeting the four criteria.

41. On his first day of residency in his PGY1 year Litofsky took Dr. Brantl on rounds and was excessively critical and demeaning. He berated the chief resident at that time, Michael Wollack in front of Dr. Brantl and told Dr. Wollack “You will not graduate from this program.” He then turned to Dr. Brantl after the chief resident had left and he said, “If you are not significantly better than him you will not graduate from this program.”

42. Opportunities for surgical participation were inequitable and limited (or not available) to those whom Litofsky did not like. He stratified residents into those he liked and disliked.

43. During Dr. Brantl’s residency, the University of Missouri Neurosurgery staff consisted of a minimum of 2 attendings, and at most 4 attendings only for a brief period of time.

44. After Dr. Brantl’s first performance review in his PGY-2 year (July-December of 2009) of residency Litofsky stated, “Although you are meeting your goals at the present time, your current style of self-education will not suit you well for further progression

during residency training.”

45. Many performance reviews by the University of Missouri attendings were completed with poor evaluations of Dr. Brantl during periods when he was not rotating with them on their service; in other words, the attending physician had not been with Dr. Brantl during clinical practice to allow for any supervision or evaluation.

46. This practice of evaluating Dr. Brantl when he was on other services occurred frequently throughout his training.

47. The main concerns cited by attendings toward the end of Dr. Brantl’s residency training was regarding his technical surgical skills. Yet, the vast majority of more advanced surgical procedures performed by Dr. Brantl during patient operations, were performed with chief residents who disagreed with the evaluations by the attendings.

48. The chief residents were never consulted by Litofsky or other attending physicians to inquire about his/her assessment of Dr. Brantl’s technical surgical skills at his level of training.

49. A highlight example occurred when the chief resident during Dr. Brantl’s PGY-3 year of training, Dr. C.P. Paullus, visited with him at least weekly about concerns that he was not being treated fairly or given appropriate opportunities for progression.

50. Dr. Paullus informed Dr. Brantl that as the chief resident Dr. Paullus discussed concerns he had regarding the treatment of Dr. Brantl directly with Litofsky on multiple occasions. He informed Dr. Brantl that Liofsky offered an underwhelming response to these concerns.

51. The chief resident during Dr. Brantl’s PGY4 year, Dr. Brad Hiser expressed concerns of unfair and inequitable treatment of Dr. Brantl by attending physicians; especially

Litofsky. He informed Dr. Brantl on a nearly daily basis that he was trying to “shield me” from this treatment he perceived to be unfair.

52. Dr. Hiser also informed Dr. Brantl that he discussed his concerns with the program director Litofsky with minimal response.

53. Dr. Hiser witnessed numerous harassing and belittling comments and threats by Litofsky towards Dr. Brantl during surgical procedures.

54. During Dr. Brantl’s PGY4 year of training while he was performing a craniotomy for resection of tumor with Dr. Hiser on a patient for whom Litofsky was the attending surgeon, Litofsky asked, while they were performing the parietal craniotomy, “Which structure inferior to the lesion do you need to worry about?” Dr. Brantl requested further clarification as to whether Litofsky was asking about a vascular structure, significant brain anatomy, or some other structure. Litofsky merely repeated the question.

55. Dr. Brantl whispered to Dr. Hiser that he believed Litofsky was referencing the visual cortex, but did not want to answer as it was Litofsky’s habit to ask Dr. Brantl ambiguous questions without further clarification, and when he asked for clarification, Litofsky would respond “You need to look it up”, and then later he would claim Dr. Brantl had a specific knowledge deficiency related to that ambiguous question.

56. Dr. Brantl whispered to Dr. Hiser that he was unsure what Litofsky was referencing and asked him as the chief resident if he knew what Litofsky was referencing, and he replied “Not sure what he was asking. The question was too ambiguous.”

57. Following this surgical event, Litofsky banned Dr. Brantl from the operating room and instructed him to get an anatomy book and bring it back to the operating room in a very belittling, demeaning, and hostile fashion.

58. Litofsky then made it a “requirement” that Dr. Brantl bring an anatomy book to the operating room for each case in a belittling, demeaning, and harassing fashion.

59. At one point in his PGY-3 year Litofsky allowed Dr. Brantl to perform much more during operations and admitted to him on multiple occasions “You have improved your surgical skills significantly.”

60. Despite this statement indicating improvement, Litofsky acted in an arbitrary and capricious manner towards Dr. Brantl regarding his treatment of Dr. Brantl just prior to him taking the board exam for credit in his PGY-3 year.

61. Litofsky started pulling Dr. Brantl out of rotations that year designed to give the resident further experience and time for board preparation and placing him back on the busy and demanding University service.

62. Chief resident C.P. Paullus stated publicly in a meeting with the program director Litofsky, other University of Missouri faculty, and residents present that he felt it was unfair treatment of Dr. Brantl as Litofsky allowed Paullus and other residents the opportunity to stay on these planned PGY-3 rotations that allowed them more time for preparation.

63. Litofsky’s response was “If [Dr. Brantl] hasn’t prepared appropriately by now he will not pass anyway.”

64. Dr. Brantl took and passed the ABNS written neurosurgery board examination for credit in March of 2011. He is written board certified in neurosurgery.

65. On the day the ABNS exam results were received, Dr. Brantl was out of the hospital on vacation.

66. Litofsky called Dr. Brantl on his personal cellular phone and berated Dr. Brantl for not notifying him that Dr. Brantl had completed a stereotactic radiosurgery treatment plan for

the chief resident by the request of the chief resident at the last minute prior to Dr. Brantl's departure for vacation.

67. It was common that residents would forget to notify Litofsky on such occasions, but it was exceptionally unusual for him to call and berate a resident for such a minor issue to the resident's personal cell phone while he/she was on vacation.

68. This action by Litofsky was done in violation of ACGME Program Requirement VI.C with the intention to sabotage his Well-Being while on vacation. In fact, he had a habit of doing similar things to Dr. Brantl during other vacations in his residency.

69. After passing the board examination, thereafter Dr. Brantl was not allowed to perform surgical procedures with Litofsky. Rather he was only relegated to a role of assisting. Litofsky would falsely and without justification "make up" various reasons explaining why Dr. Brantl was not participating in surgical operations, including intentionally not answering calls Dr. Brantl made to his home the night prior to a case to discuss the surgery as required by Litofsky.

70. Dr. Brantl would routinely leave Litofsky a voice message as proof that he had called to discuss the case with Litofsky, but the following day Litofsky would state Dr. Brantl had not called to discuss the case with him.

71. Dr. Brantl would inform him he had called and left a message to discuss but Litofsky would state this was not sufficient. However, it was common practice for other residents to call and discuss cases with Litofsky the night prior to cases and he would take their calls without fail.

72. An incident involved a critically ill patient who had suffered a ruptured aneurysm. Dr. Brantl was on call and suffered complications which required the on-call

neurointerventionalist. Despite repeated attempts to reach the on-call neurointerventionalist, Dr. Brantl was unable to do so, and made a record of this in the patient's medical records. LItofsky berated Dr. Brantl for acting in the patient's best interests and documenting critical of a member of the Neurosurgery faculty. He thereafter removed this documentation from the patient's medical records and instead had it placed in the medical record as an "administrative documents" which was not visible on the patient's chart.

73. The failure to afford Dr. Brantl the same opportunities as other residents to practice surgical procedures is a breach of the residency agreement in which residents are to be given opportunities to operate and progress.

74. Additionally, Dr. Brantl was afforded inadequate and below GME and ACGME standards for opportunities to operate with the other University of Missouri faculty during this time frame as well, other than he was allowed to operate unassisted when Dr. Norregaard was the attending physician.

75. Dr. Noorgaard would often leave Dr. Brantl to perform these surgeries and surgical procedures either unassisted or with minimal assistance, therefore evaluations by him that Dr. Brantl was performing below a level expected for his rank were not based on personal observation as required by GME and ACGME, or worse the patient was attended to by a medical resident deemed incompetent and therefore Dr. Noorgaard displayed gross negligence regarding the patients' outcomes and care resulting from Dr. Brantl's technical capabilities to perform these procedures unassisted and unaccompanied by an attending.

76. During his residency at the rank of PGY-3 through PGY-4 and the remediation period, Dr. Brantl was given assessments stating that he was not independent and competent at performing multiple procedures that he had performed dozens of times annually adequately and

competently without supervision and with no adverse complications.

77. A striking example is a ventriculostomy catheter insertion performed by Dr. Brantl while Litofsky was the attending. Litofsky, near the end of Dr. Brantl's residency, had rated Dr. Brantl as unable to perform this procedure independently and competently. Yet he had previously stated in evaluations for years prior that Dr. Brantl was independent and competent for such procedures and Dr. Brantl had performed this procedure successfully and competently, and most often without faculty supervision, on numerous occasions. Litofsky had, in one specific example in a written evaluation, stated that during Dr. Brantl's performing the procedure, a (replaceable) piece of equipment had accidentally fallen on the floor. Litofsky cited that as the rationale for Dr. Brantl's inability to perform the procedure independently and competently. Yet, Dr. Brantl had previously seen Litofsky drop the same piece of equipment during equivalent procedures on multiple occasions.

78. Additionally, during cases in which Dr. Brantl assisted Litofsky, Dr. Brantl pointed out critical information that would have otherwise led Litofsky to make a critical surgical mistake. One specific example occurred during a scheduled craniotomy for biopsy and excision of a brain tumor. Litofsky began shaving, marking, and injecting the wrong side of the head while Dr. Brantl was assisting only. Dr. Brantl pointed out to Litofsky that the tumor was on the contralateral side and Litofsky responded by berating Dr. Brantl for not pointing it out sooner.

79. A second example occurred during a scheduled craniotomy for excisional biopsy for a patient with multiple brain lesions using Brainlab neuronavigation. Dr. Brantl was assigned to the case at the last minute and therefore had not had a chance to review or discuss the case with Litofsky prior to the case. There was a suspicion of lymphoma given the

appearance of the lesions and the patient had been given steroids after the initial MRI but prior to the MRI for Brainlab. Dr. Brantl pointed out to Litofsky, prior to the scheduled case, that the lesions of interest had vanished and therefore were not visible on the Brainlab neuronavigational MRI. Litofsky was not aware of this fact prior to Dr. Brantl pointing it out.

80. Litofsky also required Dr. Brantl and other residents to participate in an on-call arrangement with the VA hospital that violated Medicare billing regulations. During a monthly resident meeting with faculty and residents, Litofsky informed them that the VA would no longer reimburse neurosurgery call service for call schedules that occurred simultaneously with University call coverage. Litofsky informed those present at the meeting that he would prepare two separate call schedules that provided for a different resident to be on-call for the VA and the University, but in fact he made it clear to the residents that the resident on-call for the University was also on-call for the VA even though the schedule showed two different residents as being on-call.

81. Dr. Brantl had less than a handful of complications during his residency training from more than 1,000 surgical procedures formed during the 5 years he was in the residency program. Yet, these complications, all considered minor and commonly occurring, were used as justification that Dr. Brantl was performing below his rank and expected skill level.

82. One example occurred when during an anterior cervical discectomy and fusion a screw used to secure an anterior cervical plate was broken while Dr. Brantl was tightening it. This incident was used as an example of his poor surgical technique although Dr. Brantl had seen numerous other comparable hardware complications from both residents and attendings.

83. A second example occurred when Dr. Brantl made an accidental perforation of the skin of the external auditory canal during a temporal craniotomy during dissection. This was

also cited as incompetence of his surgical technique, but the chief resident had done it just a few weeks earlier, and it had been stated by numerous faculty at Morbidity and Mortality Conference that that this specific complication “is not uncommon”.

84. When these complications were cited as the reasons for his stated “technical deficiencies” during a review with Litofsky, Dr. Brantl brought up serious complications in which other residents had recently been involved in including the dissection of a renal artery during a posterior lumbar instrumented fusion requiring a vascular surgeon to emergently repair the life-threatening injury. Additionally, Dr. Brantl brought up a recent ventricular catheter placement in a pediatric patient that had been inserted and lost into a pediatric patient’s brain that required open craniotomy for removal. When he asked Litofsky why his minor common complications were magnified to be larger problems than they were and why these more major and potentially life-threatening complications were essentially ignored, he responded, “Attending physicians will certainly pay more attention to complications of residents already under a microscope.”

85. After receiving notice that his residency would be terminated, Dr. Brantl timely filed a grievance pursuant to the “Grievance Policy for Resident/Fellows” and HR502 (hereinafter “Resident Grievance”) on January 27, 2013.

86. After filing the grievance, no response was received from Litofsky within 30 days as required.

87. The Resident Grievance references HR502 University of Missouri Employee Grievance Policy which provides the right to have a representative present at any grievance hearing, to present material and fact witnesses, and to have sufficient time to present my case. Rather, Dr. Brantl was informed that his grievance hearing would last one hour. He requested a

minimum of one day for the hearing and indicated that two days was more appropriate. The University of Missouri's Grievance Policy for Employees HR-502, which is incorporated by reference into the residence grievance policy, provides for a legal representative, a full hearing on the record, witness testimony with direct and cross examination, and various levels of appeal. Dr. Brantl was told by the head of GME office, Dr. Koivunen, that his attorney could not be present and that she would have University of Missouri legal counsel present to prevent it.

88. A grievance hearing was scheduled without a response to Dr. Brantl's grievance from Litofsky. Additionally, Dr. Brantl was notified late at night on a Friday night while his attorney was out of state that the hearing would take place that following Monday morning with or without Dr. Brantl's presence in violation of policy.

89. Defendant's agents were aware that Dr. Brantl was out of town at that time as well and would not be able to attend any grievance hearing.

90. Once the grievance was filed, the Residency Program Director and the Associate Dean for Graduate Medical Education had a duty to "ensure compliance with grievance and due process procedures as set forth in the Institutional Requirements and implemented by the sponsoring institution," and to "comply with the sponsoring institutions written policies and procedures, including those specified in the Institutional Requirements, for selection, evaluation and promotion of residents, disciplinary action, and supervision of residents."

91. Furthermore, the lack of a meaningful grievance process was evident due to the fact that a replacement resident had already been hired prior to any hearing on Dr. Brantl's grievance. That Dr. Brantl's grievance would be denied was self-evident from the actions of those whose responsibility and duty it was to afford Dr. Brantl a meaningful hearing on his

grievances.

92. Defendant University violated ACGME Program Requirement that Program Requirement that “the program director may not appoint more residents than approved by the Review Committee, unless otherwise stated in the specialty-specific requirements.” The violation of this Program Requirement occurred prior to the resolution of my grievance and appeal. During the pendency of his grievance, the Division of Neurosurgery interviewed and hired a resident to replace his position in the neurosurgery program. This was indicative of bias and a predetermined outcome to Dr. Brantl’s grievance.

93. GME-39 is a grievance policy that was never presented to Dr. Brantl prior to or after filing his grievance.

94. At the end of his PGY3 year, Dr. Brantl was informed that he was promoted to PGY4, and yet he would remain on probation until his performance scores improved to a “satisfactory” level. This was a violation of GME-01 in that this notice of probation did not contain the required information and documents that would inform Dr. Brantl of the issues leading to the action, the expected improvement as to what was “satisfactory” and the length of time he had to accomplish the improvement.

95. In Dr. Brantl’s PGY3 evaluation for 1/10-6/10, he addressed specific improvement areas, but was never given any written notice or verbal notice whether he did or did not achieve those goals. However, by promoting Dr. Brantl to the PGY4 year of training Litofsky implicitly admitted that Dr. Brantl was performing satisfactorily. By Litofsky stating that if Dr. Brantl had not remedied the deficiencies and met that criteria, that he would be placed on “Remediation”, and yet he was not placed on remediation at the completion of that year. Rather, Litofsky promoted Dr. Brantl to the PGY4 year but then acted in a capricious and

arbitrary manner by stating that he would remain on probation until his performance scores were “Satisfactory”.

96. After receiving a passing score on the ABNS board examination and while at the rank of a PGY4 resident, Dr. Brantl was sent to the pediatric neurosurgery rotation at the University of Utah in place of the PGY5 resident ahead of him in the program because he had not yet passed the neurosurgery boards for credit.

97. At a meeting with faculty and all residents, Litofsky informed the attendees that Dr. Brantl would be going to the rotation that year in place of the PGY5 resident because the program director from the University of Utah neurosurgery residency indicted the rotating resident would have to be a resident who would not have to take the boards because the resident on the pediatric service would be too busy to have time to prepare for the boards.

98. The University of Utah neurosurgery residents were given easier rotations and one full month off of all services to prepare for the boards.

99. When Litofsky informed Dr. Brantl that he would be required to take the boards during that rotation, Dr. Brantl protested and stated it was unfair as he would not have time to study or prepare. Litofsky responded, “You shouldn’t have to study at all.”

100. Dr. Brantl found this response to be extremely inflammatory and offensive as all neurosurgeons and neurosurgery residents are aware that because the ABNS board examination is graded on a curve and all exam takers study hard for over 1 year prior to taking the exam.

101. Dr. Brantl took the ABNS board examination in 2012 with no hours of study beforehand and achieved a score of 235 which was below the passing score of 286.

102. As expected, following the publication of board exam results, Litofsky used that score as a means to support his claim of Dr. Brantl’s “knowledge deficiency.” When Dr. Brantl

responded stating it was set up that way, Litofsky stated, “Other residents have also been asked to take the exam for self-assessment after previously passing it.”

103. Regarding the remediation policy Dr. Brantl was not given any extra interventions to assist him in remediation. Contrarily, Litofsky required him to carry a log of score reports which was a pre-determined attempt to rank Dr. Brantl with the lowest scores possible despite in many cases no opportunity to operate or remediate on individual cases, and no constructive feedback was given. Additionally, Dr. Brantl was not assigned a representative or mentor to assist him in violation of GME policy.

104. While at the University of Utah, Dr. Brantl performed over 100 surgical procedures and operations, under the guidance of three attendings, and received successful performance evaluations.

105. Additionally, while at the University of Utah pediatric neurosurgery program, Dr. Brantl was rotating next to their own resident in the same year of training as Dr. Brant; therefore, they were able to evaluate him as a direct comparison to their own resident.

106. Between January and March, 2012, Dr. Brantl was evaluated as “assists competently” to “competent and independent” on at least 52 separate metrics in the six core competency areas by three attendings at the University of Utah . He was described as “Overall, a good resident” and “Rylie is great to work with” and “Rylan was a great pleasure to have on service. He vastly improved his surgical skills throughout his three months to a solid level. Our service was enhanced by his rotation.”

107. Between January 2010 and September 2011, Dr. Brantl was evaluated on 52 separate metrics in the six core competency areas as meeting the goals for the previous six months by two attendings at Boone Hospital.

108. All attendings who evaluated Dr. Brantl between January 2010 through September 2011 at Boone Hospital in Columbia, Missouri rated him as meeting the goals of a resident for a resident at Dr. Brantl's level of training.

109. Yet, many of the evaluations performed by Defendant University's attendings, especially Litofsky, rated Dr. Brantl as not meeting the goals of a resident at this level of training and despite him passing the ABNS Board examination. It is a violation of GME and ACGME requirements to permit a resident to perform surgical procedures unassisted when they are deemed unable to perform those procedures competently and independently. Allowing such activities would unreasonably jeopardize patient safety and care.

110. One example was Litofsky's evaluation of a ventriculostomy placement by Dr. Brantl. Early on and for several evaluations he rated Dr. Brantl as competent and independent in performing this procedure, then he rated Dr. Brantl as not performing competently and independently to perform them despite the fact that Dr. Brantl continued to perform them competently and independently in his presence and with all other attendings without any supervision.

111. Additionally, despite the University of Missouri faculty concerns regarding Dr. Brantl's competence, knowledge, and technical abilities, he was still left on the service multiple times weekly to evaluate, diagnose, and treat patients without any supervision by attendings or chief residents.

112. Further, even after receiving notice of termination of his residency, because of Dr. Brantl's alleged academic deficiencies, Litofsky continued to allow Dr. Brantl to be a primary provider for diagnosis and treatment of patients on the neurosurgery service until the date of his termination.

113. Dr. Brantl completed over 443 introspective case summaries as the primary means by which residents received daily feedback and evaluations from the attendings regarding a resident's surgical and procedural knowledge and skills. They were an interactive record by which residents demonstrated growth of knowledge and improvement of skills and by which attendings actively helped educate and evaluate residents.

114. Compared with Dr. Brantl's quarterly and semi-annual evaluations, these introspective case summaries did not support the conclusions of Litofsky and were often directly opposite of Dr. Brantl's scoring for quarterly and semi-annual evaluations.

115. For example, attendings Tanaka and/or Mollman notified all neurosurgery residents that they had not received any introspective case summaries except from Dr. Brantl yet Litofsky frequently stated that Dr. Brantl did not actively participate in his own education to a satisfactory level and that his colleagues did so to a greater degree. This is factual evidence to the contrary of Litofsky's claims.

116. Dr. Brantl provided introspective summaries to attendings within 24 hours other than a few instances when other work duties interfered.

117. On multiple occasions, Litofsky sent Dr. Brantl demeaning and derogatory emails pertaining to planning for stereotactic radiosurgery (radiation treatment of tumors). Dr. Brantl would perform this procedure without Litofsky present and he would "review" at a later date and then criticize Dr. Brantl that they were not satisfactory. Dr. Brantl would review the plan after Litofsky's "changes" and not be able to note any significant changes.

118. Dr. Brantl did as instructed by Litofsky in his "Remediation" period and brought case reports to assigned cases with attendings and provided introspective summaries to attendings within 24 hours other than save for a few exceptions in which he was unable to do so

secondary to service demands.

119. Dr. Brantl was given a copy of an email by the chief resident Janet Lee between her and Litofsky as further evidence of the hostile environment created for several residents in the neurological surgery residency program at the University of Missouri.

120. The email exchange between the chief resident Janet Lee and Litofsky correlates with the negative resident reviews of the neurosurgery residency program at the University of Missouri by the residents per the anonymous resident surveys of the program for the ACGME. This behavior was a pattern with Litofsky with numerable residents that included hostility, belittling and demeaning remarks, and threatening behavior.

121. When Dr. Brantl first started in the program it was made clear to him that several previous residents under Litofsky had been terminated or resigned. The chief resident at the time Dr. Brantl began his residency (Dr. Wollack) was threatened daily with termination.

122. Things got so bad for Dr. Wollack during Dr. Brantls first month that the chief resident refused to present to work on multiple days and subsequently Dr. Wollack informed Dr. Brantl he discussed his concerns with the Department of Surgery Chair about Litofsky's abusive treatment.

123. Dr. Wollack informed Dr. Brantl that the Department of Surgery Chair Steve Eubanks informed Litofsky that terminating Dr. Wollack or threatening him further would not be an option.

124. Dr. Wollack did graduate but had ongoing difficulties and threats from Litofsky until he graduated.

125. The next chief resident, Dr. Faris Fakhoury, had a similar experience to Dr. Wollack, and was similarly treated with hostility and threatened daily by Litofsky. Dr. Fakhoury

also had multiple discussions with Dr. Brantl stating that he had also met with the Department of Surgery Chair Dr. Eubanks, and he was also assured that he would not be terminated.

126. Dr. Fakhoury also did graduate from the residency program but with likewise daily hostility and threats by Litofsky until his graduation.

127. The resident a year above Dr. Brantl in training, Dr. Michael Muzinich was also a daily target of harassment and demeaning/belittling comments and threats by Litofsky. He subsequently transferred to another residency program in a different specialty at the University of Missouri.

128. Dr. Janet Lee was another resident peer to Dr. Brantl in training and chief resident as well who was similarly treated in this same fashion with hostility, demeaning/belittling comments, and harassment. She was also threatened repeatedly with termination by Litofsky, but did ultimately complete the residency program.

129. Dr. Brantl did hear frequent concerns from co-residents, residents in other programs, and other non-University attending staff of his unfair treatment by Litofsky.

130. The ACGME resident survey results also reflected a harassing and threatening environment of the neurosurgery program at the University of Missouri and noted that the environment was not conducive for education.

131. Additionally, the probation of the program by the ACGME and multiple violations are evidence that it is/was a poor quality program with poor leadership.

132. After Dr. Brantl's residency contract was not renewed and he was dismissed from the residency program, two residents junior to Dr. Brantl (Dr. Mayur Jayarao and Dr. Sanjay Konakondla) transferred to other programs and told him of their concerns of the hostile work environment, poor program performance, and their fears that they would be treated like

Dr. Brantl with threats and/or termination.

133. Another resident (Dr. Ali Farooqui) was arrested on drug related charges and was ordered to complete rehab. Dr. Farooqui informed Dr. Brantl that Litofsky encouraged him to resign following the incident, and in turn he was promised support by Litofsky to help him get a job in a research lab at the University with the potential to resume his neurological surgery residency training at a later date after the successful completion of a rehab program. This resident later informed Dr. Brantl, however, that he was told by research faculty that when they discussed his potential employment for research with Litofsky, Litofsky discouraged them from hiring the resident.

134. Prior to beginning his residency program, which was a 6-year program, Dr. Brantl was coerced to sign an agreement extending his residency from 6 to 7 years. Litofsky initially presented it as a no-pressure opportunity, but then subsequently had the program coordinator at that time (Judy Nolke) draft the agreement and he had her email Dr. Brantl nearly daily with the proviso of a deadline by which Dr. Brantl needed to sign the agreement. Judy Nolke persistently apologized to him for being so persistent, but that she was instructed to do such by Litofsky.

135. Dr. Brantl had no option but to sign the contract extending his residency from 6 to 7 years as he feared the possible repercussions affecting his 6-year residency program including a hostile work environment and possible termination.

COUNT I: BREACH OF CONTRACT

For Count I of his Complaint, for Breach of Contract against defendant University, Plaintiff Rylie Brantl, M.D., states as follows:

136. Plaintiff herein incorporates by reference the allegations contained in Paragraphs

1 through 135 of his Complaint.

137. Plaintiff and Defendant University entered into an agreement whereby Defendant University agreed that the Resident Contract and the University's Collected Rules and Regulations, and GME and ACGME Policies and Requirements, would constitute the terms and conditions pertaining to the surgical residency program, and Plaintiff agreed that he would be expected to satisfactorily meet these terms and conditions in order to be successfully promoted each year of the surgical residency program.

138. Plaintiff performed his agreement by meeting the requirements set by GME and ACGME, as applicable.

139. Defendant University failed to perform its agreement, including, but not limited to, the following:

- a. failing to adhere to GME Policies; or
- b. failing to Adhere to ACGME Program Requirements; or
- c. failing to follow the University's grievance policy; or
- d. failing to follow GME-01 and GME-02 and the Policy to Address Resident Concerns; or
- e. failing to provide notice to Dr. Brantl of his opportunity to respond and opportunity to remediate; or
- f. failing to detail items of deficiency and a plan for remediation; or
- g. failing to provide justification in specific detail of the reasons for nonrenewal; or
- h. failing to apply the same criteria and standards to Dr. Brantl that it applied to other successful surgical residents.

140. Neurosurgery medical residents are required to take The American Board of Neurological Surgery (“ABNS”) examination in order to successfully matriculate the residency program.

141. A passing score of the ABNS examination is a required step towards certification by The American Board of Neurological Surgery.

142. In Dr. Brantl’s PGY3 residency year, he took the ABNS examination for credit and scored 319 with a score of 286 being the minimum passing scaled score for the 2011 Primary Examination.

143. Program Director Litofsky expressed disappointment to Dr. Brantl that he had passed the ABNS as he implied that he expected him to fail and this would justify removing Plaintiff from the residency program.

144. Program Director Litofsky ordered Dr. Brantl to take the ABNS a third time contrary to recent program practices and without the ability for any preparation or opportunity to study for the examination.

145. The resident who was one year superior in training to the Dr. Brantl had been promoted to PGY5 rank despite not passing the ABNS Board Exam for credit. This resident was scheduled to travel to Utah for pediatric neurosurgery training, but was unable to complete it as scheduled because he/she had not passed the ABNS boards.

146. Between 2010 and 2013, Dr. Brantl was permitted to perform no less than 100 surgical procedures which were completely unattended by an attending physician.

147. Dr. Brantl performed and/or participated in over 1,000 surgical procedures during the 5 years of his neurological surgery residency. His rate of complications was well within the acceptable range for a medical resident with his training and skills.

148. Dr. Brantl performed over 100 surgical procedures in the presence of and under the supervision of the chief residents. The chief residents were not allowed to formally evaluate his performance.

149. Defendant University and its agents had the duty to follow its own policies and criteria in evaluating and considering plaintiff's surgical residency and base any determination of whether he should be promoted on those policies and criteria.

150. By failing to observe the standards, criteria and procedures outlined in its own rules and the GME and ACGME Policies, Procedures and Requirements pertaining to medical residents, defendant University did not perform what it so offered in the resident agreement and thereby breached the contract between plaintiff and defendant University.

151. Plaintiff was thereby damaged in the following ways:

a. He lost past and potential future income in an amount of not less than twenty million and 00/100 dollars (\$20,000,000) in salary and fringe benefits, and he was forced to incur expenses in relocating and searching for alternate employment; and

b. He suffered harm to his professional reputation and potential for future advancement and employment as a neurosurgeon and as a result of said consequential losses suffered a loss of not less than thirty million and 00/100 dollars (\$30,000,000.00).

WHEREFORE, Plaintiff Rylan Brantl respectfully prays for the following relief:

a) That Plaintiff be awarded back pay from the date of termination until the date of judgment, including prejudgment interest, and reimbursement for any and all out-of-pocket incidental expenses. Plaintiff also prays for the value of all expected income lost from the contract with Altru Health Systems, lost vacation time, lost sick leave time, retirement, and any other appropriate relief necessary to make Plaintiff

whole and compensate him for the breaches described above in an amount not less than \$50,000,000.00;

b) That Plaintiff be awarded his reasonable attorney's fees and costs;

c) That Plaintiff be awarded such other legal and equitable relief as this

Court deems just and proper.

COUNT II: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

For Count II of his Complaint, for Breach of the Covenant of Good Faith and Fair Dealing against defendant University, Plaintiff Rylan "Rylie" Brantl, M.D., states as follows:

152. Plaintiff hereby re-alleges and repeats paragraphs 1 through 151, and incorporates them herein as if fully set forth.

153. Plaintiff's employment as a neurosurgical medical resident is an enforceable contract. The terms of said as contained in the appointment letter stated, inter alia, "that his appointment is be subject to all rules, orders and regulations of the University and University of Missouri Health Care which included the GME Policies, Program Manual, and ACGME Program Requirements.

154. As a result of the employer-employee relationship between Plaintiff and Defendant University, the terms of Plaintiff's resident contract with Defendant University, and the expressed and implied promises made in connection with said resident contract and decisions, and the acts, conduct and communications resulting in said promises, Defendant University promised to act in good faith toward and deal fairly with Plaintiff, which requires, among other things, that:

a. Each party act in good faith toward the other concerning all matters associated with the terms of Plaintiff's contract as a surgical resident and adherence to the GME

Policies and ACGME Program Requirements;

b. Each party act in fairness toward the other concerning all matters associated with the terms of Plaintiff's resident contract as a surgical resident and adherence to the GME Policies and ACGME Program Requirements;

c. Each party would comply with its representations and promises concerning all matters associated with the terms of Plaintiff's resident contract as a surgical resident and adherence to the GME Policies and ACGME Program Requirements; and

d. Defendant University would give Plaintiff's interests the same consideration it gives its own.

155. Defendant University's refusal to perform under the terms of Plaintiff's resident contract was wrongful, in bad faith, and in violation of its duties.

156. Defendant University's breach of the covenant of good faith and fair dealing caused Plaintiff to suffer damages and injury.

157. As a direct result and proximate cause of Defendant University's breach of the covenant of good faith and fair dealing, Plaintiff suffered reputational harm, lost salary compensation and increases, lost retirement and other fringe benefits, and incurred relocation expenses, in an amount yet to be determined, but in excess of twenty million dollars (\$20,000,000.00).

WHEREFORE, Plaintiff prays for judgment against Defendant University for an amount which includes Plaintiff's actual costs and lost wages, lost future earnings, loss of professional status and reputation, incidental damages, consequential damages, and such other and further relief as the Court deems just and proper.

COUNT III: PROMISSORY ESTOPPEL

For Count III of his Complaint, for Promissory Estoppel against defendant University, which is pleaded in the alternative to Counts I and II, Plaintiff Rylie Brantl, M.D., states as follows:

158. Plaintiff hereby re-alleges and repeats paragraphs 1 through 157 and incorporates them herein as if fully set forth.

159. Defendant University makes a promise to all of its medical residents, including Dr. Brantl, that Defendant University will comply with all of the provisions of its GME Policies and Procedures, and with the ACGME Program Requirements.

160. Dr. Brantl relied upon Defendant University's promise to comply with the GME Policies and Procedures and ACGME Program Requirements in deciding to accept the surgical residency at The University of Missouri, when he signed each residency agreement or, as the case may present, relied upon and accepted the notification that he was promoted to PGY 4 (rather than seeking to transfer his residency to another institution).

162. Dr. Brantl's reliance on Defendant University's promise to comply with the GME Policies and Procedures and ACGME Program Requirements when making a decision to accept the surgical residency at The University of Missouri and when he signed each residency agreement or, as the case may present, relied upon and accepted the notification that he was promoted to PGY 4, should have been expected or reasonably anticipated by Defendant University.

163. As set forth in detail above, Defendant University failed to comply with the terms and conditions set forth in the GME Policies and Procedures and ACGME Program Requirements regarding evaluation of Dr. Brantl, institution of probationary and remedial status, and provisions of due process pertaining to discipline and grievance procedures to Dr.

Brantl. Defendant University's failures to comply with the GME Policies and Procedures and ACGME Program Requirements resulted in Dr. Brantl being required to repeat the fourth year of his surgical residency, prevented him from progressing to the PGY 5 year of his residency, and ended with the non-renewal of his residency program.

164. Unless Defendant University's commitment to comply with the GME Policies and Procedures and ACGME Requirements is enforced by this Court, Dr. Brantl will suffer a grave injustice, in that he was not permitted to continue in the neurosurgery residency program.

WHEREFORE, Dr. Brantl prays that the Court:

- a) enforce the terms of the residency agreement, including the terms and conditions set forth in the GME Policies and Procedures and ACGME Program Requirements;
- b) order Defendant University to remove all references from Dr. Brantl's personnel files that he was required to repeat his PGY4 year and placed on remediation;
- c) order Defendant University to reimburse Dr. Brantl for all expected income lost from the contract with Altru Health Systems in an amount not less than \$20,000,000.00
- d) Order Defendant University to pay court costs; and
- e) Enter its Order for such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,
LAW4AG, LLC

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