

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Dauphin

County

For Prothonotary Use Only:

Docket No:

2019 cv 6337cv

2019 AUG 23 AM 10:22

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The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:

Scott A. Lynch, M.D.

Lead Defendant's Name:

The Pennsylvania State University

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Steven F. Marino, Esquire

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____

 Employment Dispute: Discrimination
 Employment Dispute: Other _____

 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____

 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: Whistleblower

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

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DAUPHIN COUNTY
PENNA

MARINO ASSOCIATES

BY: STEVEN F. MARINO, ESQUIRE
ATTORNEY I.D. #53034
JOSEPH AUDDINO, ESQUIRE
ATTORNEY I.D. #316752
301 WHARTON STREET
PHILADELPHIA, PA 19147
(215) 462-3200

SCOTT A. LYNCH, MD
c/o Marino Associates
301 Wharton Street
Philadelphia, PA

Plaintiff

v

THE PENNSYLVANIA STATE UNIVERSITY
201 Old Main
University Park, PA 16802

and

SANDY BARBOUR
Bryce Jordan Center, Room 101
University Park, PA 16802

and

CHARMELLE GREEN
Bryce Jordan Center, Room 101
University Park, PA 16802

and

THIS IS NOT ARBITRATION
CASE. AN ASSESSMENT OF
DAMAGES HEARING IS
REQUIRED

Attorneys for plaintiff

IN THE COURT OF COMMON
DAUPHIN COUNTY - CIVIL
ACTION AT LAW

No. *2019 CV 6337 CV*

2019 cv 6637cv

JAMES FRANKLIN
Bryce Jordan Center, Room 101
University Park, PA 16802

and

PENN STATE HEALTH
500 University Drive
Hershey, PA 17033-2360
Dauphin County
and

THE MILTON S. HERSHEY MEDICAL
CENTER
500 University Drive
Hershey, PA 17033-2360
Dauphin County

and

KEVIN P. BLACK, MD
Hope Drive, Suite 2400
Hershey, PA 17033

Defendants

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DAUPHIN COUNTY
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COMPLAINT - CIVIL ACTION

AND NOW comes the plaintiff, by and through counsel, and demands of the defendants jointly and severally, sums in excess of Fifty Thousand Dollars (\$50,000.00), plus interest, costs and damages for prejudgment delay upon the causes of action set forth in the following:

THE PARTIES AND RELATED ENTITIES

1. Plaintiff Scott A. Lynch, MD is an adult individual residing within the Commonwealth of Pennsylvania. Plaintiff may be contacted by through counsel, Steven F. Marino, Esquire or Joseph Auddino, Esquire of Marino Associates at 301 Wharton Street, Philadelphia, PA 19147.

2. Defendant The Pennsylvania State University is a state related, land-grant institution of higher education with campuses and facilities throughout Pennsylvania having a principal office located 201 Old Main, University Park, PA 16802. At all relevant times material hereto defendant The Pennsylvania State University was engaged in teaching, research, and public service. At all relevant times material hereto, defendant The Pennsylvania State University acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope of their employment.

3. Defendant Sandy Barbour is an adult individual and at all relevant times material hereto, was the agent, servant, and employee of defendant The Pennsylvania State University, having an address for the service of process located at Bryce Jordan Center, Room 101, University Park, PA 16802. At all relevant times material hereto, defendant Sandy Barbour served the position of Vice President for Intercollegiate Athletics and Athletic Director at The Pennsylvania State University. At all relevant times material hereto, defendant Sandy Barbour acted within the course and scope of her employment with defendant The Pennsylvania State University.

4. Defendant Charmelle Green is an adult individual and at all relevant times material hereto, was the agent, servant, and employee of defendant The Pennsylvania

State University, having an address for the service of process located at Bryce Jordan Center, Room 101, University Park, PA 16802. At all relevant times material hereto, defendant Charmelle Green served the position of Senior Associate Athletic Director at The Pennsylvania State University. At all relevant times material hereto, defendant Charmelle Green acted within the course and scope of her employment with defendant The Pennsylvania State University.

5. Defendant James Franklin is an adult individual and at all relevant times material hereto, was the agent, servant, and employee of defendant The Pennsylvania State University, having an address for the service of process located at Bryce Jordan Center, Room 101, University Park, PA 16802. At all relevant times material hereto, defendant James Franklin served the position of Head Football Coach at The Pennsylvania State University. At all relevant times material hereto, defendant James Franklin acted within the course and scope of his employment with defendant The Pennsylvania State University.

6. Defendant Penn State Health is a multi-hospital health system established in or about the calendar year of 2014 pursuant to the laws of the Commonwealth of Pennsylvania serving patients and communities across central Pennsylvania, having a principal office located 500 University Drive, Hershey, PA 17033-2360. At all relevant times material hereto, defendant Penn State Health was engaged in the business of providing preventive, diagnostic, therapeutic, surgical, and urgent care medical services. At all relevant times material hereto, defendant Penn State Health acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope

of their employment. At all relevant times material hereto, defendant Penn State Health was the direct or indirect wholly owned subsidiary of defendant The Pennsylvania State University. Defendant Penn State Health regularly conducts business or otherwise utilizes the market place of Centre County, PA.

7. Defendant The Milton S. Hershey Medical Center is a non-profit physician-led health system established in or about the calendar year of 1963 pursuant to the laws of the Commonwealth of Pennsylvania, having a principal office located 500 University Drive, Hershey, PA 17033-2360. At all relevant times material hereto, defendant The Milton S. Hershey Medical Center was engaged in the business of providing preventive, diagnostic, therapeutic, surgical, and urgent care medical services to the consuming public. At all relevant times material hereto, defendant The Milton S. Hershey Medical Center acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope of their employment. At all relevant times material hereto, defendant The Milton S. Hershey Medical Center was the direct or indirect wholly owned subsidiary of defendant The Pennsylvania State University and Penn State Health. Defendant The Milton S. Hershey Medical Center regularly conducts business or otherwise utilizes the market place of Centre County, PA.

8. Defendant Kevin P. Black, MD is an adult individual and at all relevant times material hereto, was the agent, servant, and employee of defendant The Milton S. Hershey Medical Center, having an address for the service of process located 30 Hope Drive, Suite 2400, Hershey, PA 17033. At all relevant times material hereto, defendant Kevin P. Black, MD was the agent, servant, or employee of defendant Penn State Health. At all relevant

times material hereto, defendant Kevin P. Black, MD served the position of the Chairman of Orthopedics and Rehabilitation of defendant Penn State Health. At all relevant times material hereto, defendant Kevin P. Black, MD acted within the course and scope of his employment or agency with defendant Penn State Health and defendant The Milton S. Hershey Medical Center and defendant Penn State Health.

JURISDICTION AND VENUE

9. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

10. This Court maintains original jurisdiction over the instant claims pursuant to 42 Pa.C.S.A. §7361 as a result of the amount in controversy exceeding \$50,000.00.

11. Venue of this matter is properly laid in this judicial district pursuant to Pa.R.C.P.No. 1006 and Pa.R.C.P.No 2179 as a result of the defendants regularly conducting business or otherwise utilizing the market place within this judicial district.

THE EMPLOYMENT OF PLAINTIFF SCOTT A. LYNCH, MD

12. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

13. Plaintiff Scott A. Lynch, MD is a physician licensed to practice medicine in the Commonwealth of Pennsylvania specializing in the field of orthopedic surgery.

14. In or about April 1997, defendant The Milton S. Hershey Medical Center undertook a campaign to recruit and encourage plaintiff Scott A. Lynch, MD to accept employment offered by defendant The Milton S. Hershey Medical Center.

15. In or about April 1997, defendant The Pennsylvania State University undertook a campaign to recruit and encourage plaintiff to accept a faculty appointment offered by defendant The Pennsylvania State University.

16. On or about June 1, 1997, the plaintiff accepted employment with defendant The Milton S. Hershey Medical Center to furnish clinical orthopedic services through defendant The Milton S. Hershey Medical Center.

17. On or about June 1, 1997, the plaintiff accepted a faculty appointment offered by defendant The Pennsylvania State University to serve as an Assistant Professor in the Department of Orthopedics and Rehabilitation in the College of Medicine at The Pennsylvania State University.

18. At all relevant times, the plaintiff's employment relationship with defendant The Milton S. Hershey Medical Center was governed by a written memorandum dated July 23, 2018, authored by defendant Kevin P. Black, MD setting the forth the terms of the plaintiff's compensation and other terms and conditions presented in the employment policies and procedures established by defendant The Milton S. Hershey Medical Center [see written Penn State Health Milton S. Hershey Medical Center Bone and Joint Institute Memorandum dated July 23, 2018, authored by defendant Kevin P. Black, MD attached hereto marked Exhibit 1].

19. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon the plaintiff to provide professional orthopedic surgery services on behalf of defendant The Milton S. Hershey Medical Center on a full-time basis as requested by defendant The Milton S. Hershey Medical Center.

20. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon defendant The Milton S. Hershey Medical Center to pay plaintiff an annual compensation for each contract year.

21. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon defendant The Milton S. Hershey Medical Center to pay plaintiff a productivity bonus for each contract year provided that his performance exceeded a defined productivity standard set for each such contract year.

22. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center contemplated that for each contract year the plaintiff was entitled to receive a productivity bonus per relative value unit (RVU) of service arising from service personally performed by the plaintiff in excess of the defined productivity standard set for each such contract year.

23. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon the plaintiff to

render professional orthopedic surgery services on behalf of defendants The Milton S. Hershey Medical Center with competence, efficiency, and loyalty.

24. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon the plaintiff to comply with defendant The Milton S. Hershey Medical Center's policies, standards, and regulations.

25. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon the plaintiff to comply with applicable ethical precepts of the medical profession.

26. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center imposed a duty upon the plaintiff to comply with applicable Intercollegiate Athletic rules, regulations, and standards.

27. The aforementioned employment relationship between the plaintiff and defendant The Milton S. Hershey Medical Center contemplated that the plaintiff was to serve under the direct supervision of defendant Kevin P. Black, MD.

28. The plaintiff's faculty appointment with the defendant The Pennsylvania State University was governed by terms and conditions set forth in the written Penn State Faculty Appointment For Milton S. Hershey Medical Center Clinical Staff Fixed Term Appointment dated June 15, 2018, and defendant The Pennsylvania State University's written university faculty policies and procedures [see the written Penn State Faculty Appointment For Milton S. Hershey Medical Center Clinical Staff Fixed Term Appointment dated June 15, 2018, attached hereto and marked Exhibit 2].

29. The plaintiff served as a faculty appointee for defendant The Pennsylvania State University without remuneration, but with entitlement to benefits.

**THE MEDICAL SERVICE AGREEMENT ENGAGED BETWEEN DEFENDANT THE
PENNSYLVANIA STATE UNIVERSITY AND DEFENDANT THE MILTON S.
HERSHEY MEDICAL CENTER**

30. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

31. At all material times relevant hereto, the defendant The Pennsylvania State University, on behalf of its Department of Intercollegiate Athletics, engaged defendant The Milton S. Hershey Medical Center to provide qualified primary, orthopedic and physical therapy/athletic training services to those Penn State University student-athletes who participate in the Thirty One (31) Pennsylvania State athletic programs, and men's and women's rugby and spirit squads.

32. On or about March 22, 2017, the terms of defendant The Pennsylvania State University's engagement of defendant The Milton S. Hershey Medical Center to provide qualified primary, orthopedic and physical therapy/athletic training services to Penn State University student-athletes was committed to writing in a Medical Services Agreement.

33. Pursuant to the aforementioned Medical Service Agreement, defendant The Pennsylvania State University was to pay defendant The Milton S. Hershey Medical Center an annual sum for contract services as set forth below:

(a)	Year 1:	July 2016 – June 20, 2017	\$850,000.00
(b)	Year 2:	July 2017 – June 20, 2018	\$875,000.00
(c)	Year 3:	July 2018 – June 20, 2019	\$901,765.00
(d)	Year 4:	July 2019 – June 20, 2020	\$928,818.00
(e)	Year 5:	July 2020 – June 20, 2021	\$956,683.00.

34. The terms and conditions of the aforementioned Medical Services Agreement included a "*Termination Without Cause*" provision.

**PLAINTIFF'S ASSIGNMENT TO SERVE AS THE INTERCOLLEGIATE
ATHLETICS TEAM ORTHOPEDIC PHYSICIAN FOR THE PENN STATE UNIVERSITY
FOOTBALL TEAM AND THE DIRECTOR OF ATHLETIC MEDICINE FOR PENN
STATE UNIVERSITY**

35. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

36. To satisfy the performance of the aforementioned Medical Services Agreement, in or about February 2013, defendant Kevin P. Black, MD appointed the plaintiff the responsibility to serve as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team.

37. To further satisfy the performance of the aforementioned Medical Services Agreement, in or about August 2014, defendant Kevin P. Black, MD appointed the plaintiff the additional responsibility to serve as the Director of Athletic Medicine for Penn State University.

38. The plaintiff served the assignment of Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University continually from the aforementioned dates of appointment until March 1, 2019.

STANDARDS SAFEGUARDING INSTITUTIONAL GOVERNANCE OF ATHLETICS

39. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

40. At all material times relevant hereto, the Big Ten Intercollegiate Athletic Conference adopted and implemented standards for the purpose of protecting student-athletes and prioritizing their medical care over other considerations.

41. At all material times relevant hereto, the Big Ten Intercollegiate Athletic Conference adopted and implemented standards to assure that the medical and athletic training staff who provide medical services to student-athletes are able to exercise their best professional judgment in caring for student-athletes.

42. At all material times relevant hereto, the defendant The Pennsylvania State University was a member of the Big Ten Intercollegiate Athletic Conference.

43. At all material times relevant hereto, the BigTen Intercollegiate Athletic Conference adopted and implemented standards designed to:

- (a) Prevent coaches from (i) having direct responsibility for, or exercising undue or improper influence over, the hiring or supervision of any member of the medical or athletic training staff who works with the coach's own team, and (ii) attempting to influence inappropriately any member of the medical or athletic training staff regarding the medical treatment of a student-athlete;
- (b) Allow for effective implementation of and adherence to institutional policies, procedures, and/or protocols regarding student-athlete concussions;
- (c) Place priority on the student-athlete's health over other considerations;
- (d) Require that the Director of Sports Medicine Services report to an academic or medical administrator outside the Athletics Department,

either exclusively or as a dual report to the administrator and the Athletics Director.

44. At all material times relevant hereto, the defendant The Pennsylvania State University agreed to abide by and honor those standards adopted and implemented by the BigTen Intercollegiate Athletic Conference for the purpose of protecting student-athletes and prioritizing their medical care over other considerations.

45. At all material times relevant hereto, the National Collegiate Athletic Association adopted and implemented a rule to ensure that athletic coaches do not have administrative oversight of doctors and athletic trainers and to affirm that those responsible for providing health care to students have unchallengeable autonomous authority to determine medical management and return-to-play decisions related to student-athletes.

46. At all material times relevant hereto, the defendant The Pennsylvania State University was a member of the National Collegiate Athletic Association.

47. At all material times relevant hereto, the defendant The Pennsylvania State University agreed to abide by and honor rules and standards implemented by the National Collegiate Athletic Association for the purpose of protecting student-athletes and prioritizing their medical care over other considerations.

48. At all material times relevant hereto the National Collegiate Athletic Association adopted By-Law 3.2.4.17 which provides that:

"An active member institution shall establish an administrative structure that provides independent medical care and affirms the unchallengeable autonomous authority of primary athletics health care providers (team physicians and athletic trainers) to determine medical management and return-to-play decisions related to student-athletes. An active institution shall designate an athletics health care administrator to oversee the institution's athletic health care administration and delivery."

49. At all material times relevant hereto, the defendant The Pennsylvania State University agreed to abide by and honor By-Law 3.2.4.17 which was adopted and implemented by the National Collegiate Athletic Association for the purpose of protecting student-athletes and prioritizing their medical care over other considerations.

**PLAINTIFF'S GOOD FAITH REPORTING OF WRONGDOING
WITHIN THE MEANING OF 43 P.S. § 1423**

50. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

51. At all material times relevant hereto, the plaintiff's professional responsibility required that he make diagnostic, therapeutic, and return-to-play decisions in connection with the best practices of medical management of Pennsylvania State University student-athletes, for whom he was responsible.

52. At all material times relevant hereto, defendant James Franklin created a culture and climate which, at a minimum, obstructed full compliance with the aforementioned standards and rules implemented to safeguard the medical management of student-athletes.

53. At all material times relevant hereto, on multiple and repeated occasions, defendant James Franklin attempted to interfere with the plaintiff's autonomous authority to determine medical management and return-to-play decisions related to student-athletes.

54. At all material times relevant hereto, the plaintiff refused to relent to the attempts of defendant James Franklin to influence and interfere with the plaintiff's medical management and return-to-play decisions related to student-athletes.

55. The plaintiff reported defendant James Franklin's wrongdoing and infraction to the plaintiff's employer, defendant The Milton S. Hershey Medical Center through communication with defendant Kevin P. Black, MD.

56. The plaintiff reported defendant James Franklin's wrongdoing and infraction to defendant The Pennsylvania State University through communication with Pennsylvania State University's Athletic Integrity Officer, Mr. Robert Boland.

57. The plaintiff reported defendant James Franklin's wrongdoing and infraction to defendant The Pennsylvania State University through communication with defendant Sandy Barbour.

58. The plaintiff reported defendant James Franklin's wrongdoing and infraction to defendant The Pennsylvania State University through communication with defendant Charmelle Green.

**THE RETALIATION AGAINST THE PLAINTIFF AS A RESULT OF THE PLAINTIFF'S
GOOD FAITH REPORTING OF WRONGDOING**

59. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

60. On or about January 24, 2019, defendants Sandy Barbour and Charmelle Green communicated a demand to defendant Kevin P. Black, MD that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for

the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

61. The plaintiff believes and therefore avers that the demand of defendants Sandy Barbour and Charmelle Green that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University arose as a result of the plaintiff's good faith reporting of defendant James Franklin's attempts to influence and interfere with the plaintiff's medical management and return-to-play decisions related to student-athletes.

62. The plaintiff believes and therefore avers that the demand of defendants Sandy Barbour and Charmelle Green that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University arose as a result of the plaintiff's good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

63. The plaintiff believes and therefore avers that the demand of defendants Sandy Barbour and Charmelle Green that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University arose as a result of the undue and improper influence exercised by defendant James Franklin over the supervision of the plaintiff's professional assignment.

64. The plaintiff believes and therefore avers that the demand of defendants Sandy Barbour and Charmelle Green that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University arose as a result of an attempt of the University defendants to avoid scandal.

65. The plaintiff believes and therefore avers that defendants Sandy Barbour and Charmelle Green communicated to defendant Kevin P. Black, MD that defendant The Pennsylvania State University contemplated exercising the "*Termination Without Cause*" provision contained in the aforementioned Medical Services Agreement in the event that the plaintiff was not relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

66. On or about January 28, 2019, defendant Kevin P. Black, MD informed the plaintiff that defendants Sandy Barbour and Charmelle Green demanded that the plaintiff be relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

67. Effective March 1, 2019, defendant Kevin P. Black, MD relieved the plaintiff from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

PLAINTIFF'S RECOMMENDATIONS TO SAFEGUARD ATHLETES

68. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

69. On February 21, 2019, the plaintiff participated in an exit interview convened at or about 11:00 a.m. in Room 102 of the Bryce Jordan Center, University Park, PA 16802 by Penn State University Consultant for Human Resources Ms. Kristin Wright and Pennsylvania State University's Athletic Integrity Officer Mr. Robert Boland.

70. During the course of the February 21, 2019 exit interview, the plaintiff, Ms. Kristin Wright, and Mr. Robert Boland engaged in conversation addressing the topic of defendant James Franklin's attempts to interfere with the plaintiff's autonomous authority to determine medical management and return-to-play decisions related to student-athletes.

71. During the course of the February 21, 2019 exit interview, the plaintiff furnished to Ms. Kristin Wright and Mr. Robert Boland a written list of recommendations in connection with medical care for intercollegiate athletes set forth as follows:

- (a) Create a new position within the Integrity Office to work alongside The Integrity Officer. This will be a physician that is hired outside of ICA.
- (b) This new position will be in charge of the Medical Policies, and hiring and evaluation of the Sports Medicine Staff, including the Athletic Trainers, and Physicians.
- (c) This new position will investigate any claims of medical impropriety or violation of medical autonomy policies.
- (d) ICA will have no input into the hiring or firing of any sports medicine staff.

(e) Athletic Trainers and The Head Athletic Trainer report directly to this new position.

(f) This physician will not have direct care responsibilities for any PSU student-athletes, and will not be permitted to care for any PSU student-athletes.

(g) Coaches and ICA Staff will have minimal contact with the physicians. It would be acceptable to have a set weekly or monthly meeting with the sports medicine staff, but under no circumstances should the coach be calling the physician to discuss medical care. The physician can contact the coach, when the physician feels it is appropriate.

(h) The Athletic Trainer will be the main conduit for medical information to the coach.

(i) Coaches are not permitted in the Training Room unless requested to be there by the medical staff.

(j) Coaches will not discuss injuries with players, either positively or negatively.

(k) Have robust agreements with coaches and staff regarding medical autonomy and have appropriate and serious penalties when the policy is violated.

(l) ICA money to support research on best medical autonomy practices, and become a national leader in this field.

72. The plaintiff furnished the above referenced list of recommendations in connection with medical care for intercollegiate athletes to Ms. Jane Mannon, Vice President Human Resources at Penn State University and defendant Kevin Black, MD.

73. On or about March 10, 2019, at or about 5:02 pm, defendant Kevin Black, MD communicated to the plaintiff by e-mail that he was unable to support the plaintiff's recommendations in connection with medical care for intercollegiate athletes upon a basis that defendant Kevin Black, MD did not have sufficient information to agree or disagree with the recommendations [see email communication dated March 10, 2019, at or about 5:02 pm, defendant Kevin Black, MD attached hereto and marked Exhibit 3].

**CONSPIRACY TO CREATE A PRETEXTUAL NARRATIVE IN FURTHERANCE OF A
SCHEME AND PLAN TO RETALIATE AGAINST THE PLAINTIFF FOR REPORTING
WRONGDOING WITHIN THE MEANING OF THE PENNSYLVANIA
WHISTLEBLOWER LAW**

74. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

75. In furtherance of a scheme and plan to retaliate against the plaintiff for reporting wrongdoing within the meaning of the Pennsylvania Whistleblower Law, defendants The Pennsylvania State University, Sandy Barbour, Charmelle Green, James Franklin, Penn State Health, The Milton S. Hershey Medical Center and Kevin P. Black, MD, individually and through representatives, in combination crafted a false narrative that the decision to relieve the plaintiff from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University was based upon an interest in having orthopedic contract services rendered by an orthopedic surgeon who resided in State College, PA as opposed to Hershey, PA.

76. In furtherance of a scheme and plan to retaliate against the plaintiff for reporting wrongdoing within the meaning of the Pennsylvania Whistleblower Law, the defendants met or otherwise engaged in conversation at various and sundry times discussing and then manufacturing the false narrative that the reason the plaintiff was relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University effective March 1, 2019, was an interest in having orthopedic contract services rendered by an orthopedic surgeon who resided in State College, PA as opposed to Hershey, PA.

77. In furtherance of a scheme and plan to retaliate against the plaintiff for reporting wrongdoing within the meaning of the Pennsylvania Whistleblower Law, defendant Kevin P. Black, MD authored a Dear Colleague Letter committing the conspired wholly false narrative to writing that the reason the plaintiff was relieved from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University effective March 1, 2019, was an interest in having orthopedic contract services rendered by an orthopedic surgeon who resided in State College, PA as opposed to Hershey, PA.

78. On or about February 4, 2019, in furtherance of a scheme and plan to retaliate against the plaintiff for reporting wrongdoing within the meaning of the Pennsylvania Whistleblower Law, defendant Kevin P. Black, MD published and circulated the Dear Colleague Letter [see Dear Colleague Letter authored by Kevin P. Black, MD attached hereto and marked Exhibit 4].

79. The stated reason provided by the defendants to relieve the plaintiff from his assignment as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University, namely, an interest in having the service rendered by an orthopedic surgeon who resided in State College, PA as opposed to Hershey, PA, is pretextual justification and a false narrative for the adverse employment action taken against the plaintiff.

COUNT I
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v The Pennsylvania State University)

80. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

81. At all material times relevant hereto, defendant The Pennsylvania State University was a public body within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1422 [relating to Definitions].

82. At all material times relevant hereto, plaintiff performed the professional responsibilities in connection with his assignment to serve as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University with competence, efficiency, and loyalty.

83. At all material times relevant hereto, plaintiff complied with applicable employment and university faculty policies, standards, and regulations.

84. At all material times relevant hereto, plaintiff complied with the applicable ethical precepts of the medical profession.

85. The action of defendant James Franklin in attempting to interfere with the

plaintiff's autonomous authority to determine medical management and return-to-play decisions related to student-athletes was a wrongdoing which violated a code of conduct or ethics designed to protect the interest of the public within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1422 [relating to Definitions].

86. The action of defendant James Franklin's exercise of undue and improper influence over the supervision of the plaintiff's professional assignment to serve as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and the Director of Athletic Medicine for Penn State University was a wrongdoing which violated a code of conduct or ethics designed to protect the interest of the public within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1422 [relating to Definitions].

87. At all relevant times material hereto, defendant The Pennsylvania State University through its authorized agents, ostensible agents, servants, workman and/or employees, owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

88. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant the Pennsylvania State University through its authorized agents, ostensible agents, servants,

workman and/or employees retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

89. The removal of the plaintiff from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University materially affected the terms and conditions of the plaintiff's employment.

90. The retaliation of defendant The Pennsylvania State University through its authorized agents, ostensible agents, servants, workman and/or employees against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

91. As a direct and proximate result of defendant The Pennsylvania State University through its authorized agents, ostensible agents, servants, workman and/or employees' reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur a loss of wages and compensation.

92. As a direct and proximate result of defendant The Pennsylvania State University through its authorized agents, ostensible agents, servants, workman and/or employees' reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur a loss of various and diverse sums of money he was required to expend to enable to him to serve as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State

University.

93. As a direct and proximate result of defendant The Pennsylvania State University's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to be ostracized and isolated from a community of persons, colleagues and friends and a program which had become an integral part of his life.

94. As a direct and proximate result of defendant The Pennsylvania State University's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to suffer a loss of prestige and professional standing in the community.

95. As a direct and proximate result of defendant The Pennsylvania State University's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur attorney's fees and costs prosecuting this matter.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant The Pennsylvania State University, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;

V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;

VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT II
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v Sandy Barbour)

96. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

97. At all relevant times material hereto, defendant Sandy Barbour owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

98. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant Sandy Barbour retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

99. The retaliatory action taken by defendant Sandy Barbour against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the

Pennsylvania Whistleblower Law.

100. The aforementioned retaliatory action taken by defendant Sandy Barbour against the plaintiff constituted an intentional act of misfeasance.

101. As a direct and proximate result of defendant Sandy Barbour's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant Sandy Barbour, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;
- V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;
- VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT III
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v Charmelle Green)

102. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

103. At all relevant times material hereto, defendant Charmelle Green owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

104. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant Charmelle Green retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

105. The retaliatory action taken by defendant Charmelle Green against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

106. The aforementioned retaliatory action taken by defendant Charmelle Green against the plaintiff constituted an intentional act of misfeasance.

107. As a direct and proximate result of defendant Charmelle Green's reckless

and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant Charmelle Green, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;
- V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;
- VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT IV
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v James Franklin)

108. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

109. At all relevant times material hereto, defendant James Franklin owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence

of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

110. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant James Franklin retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

111. The retaliatory action taken by defendant James Franklin against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

112. The aforementioned retaliatory action taken by defendant James Franklin against the plaintiff constituted an intentional act of misfeasance.

113. As a direct and proximate result of defendant James Franklin's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant James Franklin, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;

III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;

IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;

V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;

VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT V
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v Penn State Health)

114. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

115. At all material times relevant hereto, defendant Penn State Health was an employer within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. §1422 [relating to Definitions].

116. At all relevant times material hereto, defendant Penn State Health owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

117. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the

meaning of the provisions of the Pennsylvania Whistleblower Law, defendant Penn State Health retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

118. The retaliation of defendant Penn State Health against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

119. As a direct and proximate result of defendant Penn State Health's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant Penn State Health, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;
- V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;

VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT VI
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v The Milton S. Hershey Medical Center)

120. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

121. At all material times relevant hereto, defendant The Milton S. Hershey Medical Center was an employer within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1422 [relating to Definitions].

122. At all relevant times material hereto, defendant The Milton S. Hershey Medical Center owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

123. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant The Milton S. Hershey Medical Center retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

124. The retaliation of defendant The Milton S. Hershey Medical Center against

the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

125. As a direct and proximate result of defendant The Milton S. Hershey Medical Center's reckless and deliberately indifferent retaliatory actions the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant The Milton S. Hershey Medical Center, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;
- V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;
- VI. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT VII
VIOLATION OF THE WHISTLEBLOWER LAW 43 P.S. §1421, et seq.
(Scott A. Lynch, MD v Kevin P. Black, MD)

126. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

127. At all relevant times material hereto, defendant Kevin P. Black, MD owed the plaintiff a statutory duty not to retaliate against the plaintiff in the event that the plaintiff made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, 42 P.S. § 1423 [relating to Protections of Employees].

128. As a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing within the meaning of the provisions of the Pennsylvania Whistleblower Law, defendant Kevin P. Black, MD retaliated against the plaintiff and caused his removal from his position as the Intercollegiate Athletics Team Orthopedic Physician for the Penn State University Football Team and Director of Athletic Medicine for Penn State University.

129. The retaliatory action taken by defendant Kevin P. Black, MD against the plaintiff as a result of the plaintiff having made a good faith report to his employer or appropriate authority regarding the occurrence of instances of wrongdoing violated the provisions of the Pennsylvania Whistleblower Law.

130. The aforementioned retaliatory action taken by defendant Kevin P. Black, MD against the plaintiff constituted an intentional act of misfeasance.

131. As a direct and proximate result of defendant Kevin P. Black, MD's reckless

and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant Kevin P. Black, MD, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded reasonable attorney's fees as provided for pursuant to 43 P.S. §1425;
- III. That plaintiff be awarded the cost of prosecuting this claim as provided for pursuant to 43 P.S. §1425;
- IV. That plaintiff be awarded witness fees as provided for pursuant to 43 P.S. §1425;
- V. That plaintiff be awarded appropriate injunctive relief as provided for pursuant to 43 P.S. §1424;
- VI. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT VIII
CIVIL CONSPIRACY TO VIOLATE THE PROVISIONS OF THE PENNSYLVANIA
WHISTLEBLOWER LAW
((Scott A. Lynch, MD v All Defendants))**

132. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully hereto.

133. At all material times relevant to the subject matter described in this Complaint, the defendants assisted each other in performing the various actions described

and lent approval and support to each other during events described which caused the plaintiff to suffer harms and losses.

134. At all material times relevant to the subject matter described in this Complaint, the defendants combined or otherwise agreed to retaliate against the plaintiff in violation of the provisions of the Pennsylvania Whistleblower Law.

135. The aforementioned combined action of the defendants was undertaken with the intent and in furtherance of a scheme and plan to retaliate against the plaintiff for reporting wrongdoing within the meaning of the Pennsylvania Whistleblower Law.

136. The aforementioned combined action of the defendants was undertaken with malice.

137. The aforementioned combined action of the defendants was undertaken with the intent to injure the plaintiff.

138. The aforementioned combined action of the defendants was undertaken without justification.

139. As a direct and proximate result of the defendants' actions the plaintiff was caused to suffer that injury, loss and expense aforementioned.

WHEREFORE, the plaintiff requests that this Court enter judgment in his favor and against defendants, jointly and severally, and award the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded punitive damages;
- III. That plaintiff be awarded interest and damages for prejudgment delay;
- IV. That plaintiff be awarded further relief as this Court may deem appropriate.

COUNT IX
RETALIATORY ADVERSE EMPLOYMENT CONSEQUENCE
VIOLATES PUBLIC POLICY
(Scott A. Lynch, MD v The Milton S. Hershey Medical Center)

140. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

141. The Penn State Nittany Lions sport teams represent the Pennsylvania State University in intercollegiate athletic competitions, competing in the NCAA Division I as a member of the Big Ten Conference.

142. Student-athletes who participate in collegiate athletics at the Division I level are exposed to the inherent risk that they will suffer foreseeable injury.

143. The promotion of the health, safety, morals, and welfare of collegiate student-athletes is a matter of clear and substantial public interest of this Commonwealth.

144. The protection of the health, safety, morals, and welfare of collegiate student-athletes is a matter of clear and substantial public policy of this Commonwealth.

145. At all times material hereto, defendant The Milton S. Hershey Medical Center was a medical provider charged with the responsibility of managing the medical care of collegiate student-athletes competing at the Division I level.

146. Defendant The Milton S. Hershey Medical Center owed a common law duty to manage its administrative affairs, which implicated the medical care of collegiate student-athletes, to ensure that its action was consistent with the public interest and policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected.

147. Defendant The Milton S. Hershey Medical Center breached the common law duty it owed to manage its administrative affairs consistent with the public interest and policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected as a result of taking an adverse employment action against the plaintiff physician upon a basis that the plaintiff reported activity which he believed placed collegiate student-athletes at an increased risk of harm.

148. Defendant The Milton S. Hershey Medical Center's initiation of an adverse employment action against the plaintiff physician as a result of the plaintiff physician having reported activity which he believed placed collegiate student-athletes at an increased risk of harm, impacts negatively upon the public policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected.

149. Defendant The Milton S. Hershey Medical Center violated the public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes as a result of initiating an adverse employment action against the plaintiff physician upon reason that the plaintiff physician reported activity which the plaintiff physician believed placed collegiate student-athletes at an increased risk of harm.

150. The public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes is undermined as a result of the aforementioned adverse employment action taken against the plaintiff by defendant The Milton S. Hershey Medical Center.

151. The public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes is violated as a result of the aforementioned adverse employment action taken against the plaintiff by defendant The Milton S. Hershey Medical Center.

152. As a direct and proximate result of defendant The Milton S. Hershey Medical Center's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant The Milton S. Hershey Medical Center, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;
- II. That plaintiff be awarded compensatory damages as proven at trial;
- III. That plaintiff be awarded punitive damages;
- IV. That plaintiff be awarded interest and damages for prejudgment delay;
- V. That plaintiff be awarded further relief as this Court may deem appropriate.

**COUNT X
RETALIATORY ADVERSE EMPLOYMENT CONSEQUENCE
VIOLATES PUBLIC POLICY
(Scott A. Lynch, MD v Kevin P. Black, MD)**

153. Plaintiff incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

154. At all times material hereto, defendant Kevin P. Black, MD was a medical provider charged with the responsibility of making administrative employment decisions on

behalf of defendant The Milton S. Hershey Medical Center which impacted upon the management of the medical care of collegiate student-athletes competing at the Division I level.

155. Defendant Kevin P. Black, MD owed a common law duty to make administrative employment decisions on behalf of defendant The Milton S. Hershey Medical Center to ensure that any action taken by The Milton S. Hershey Medical Center against an employee of The Milton S. Hershey Medical Center was consistent with the public interest and policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected.

156. Defendant Kevin P. Black, MD breached the common law duty he owed to ensure that the administrative employment action initiated against a Milton S. Hershey Medical Center employee be consistent with the public interest and policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected as a result of taking an adverse employment action against the plaintiff physician upon a basis that the plaintiff physician reported activity which the plaintiff physician believed placed collegiate student-athletes at an increased risk of harm.

157. The aforementioned retaliatory adverse employment action taken by defendant Kevin P. Black, MD against the plaintiff constituted an intentional act of misfeasance.

158. Defendant Kevin P. Black, MD's initiation of an adverse employment action against the instant plaintiff physician as a result of the plaintiff physician having reported activity which the plaintiff physician believed placed collegiate student-athletes at an

increased risk of harm, impacts negatively upon the public policy of this Commonwealth that the health, safety, morals, and welfare of collegiate student-athletes be prioritized and protected.

159. Defendant Kevin P. Black, MD violated the public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes as a result of initiating an adverse employment action against the plaintiff physician upon reason that the plaintiff physician reported activity which the plaintiff physician believed placed collegiate student-athletes at an increased risk of harm.

160. The public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes is undermined as a result of the aforementioned adverse employment action taken against the plaintiff physician by defendant Kevin P. Black, MD.

161. The public interest and policy of this Commonwealth of prioritizing and protecting the health, safety, morals, and welfare of collegiate student-athletes is violated as a result of the aforementioned adverse employment action taken against the plaintiff physician by defendant Kevin P. Black, MD.

162. As a direct and proximate result of defendant Kevin P. Black, MD's reckless and deliberately indifferent retaliatory actions, the plaintiff has been caused to incur that injury, loss and expense aforementioned.

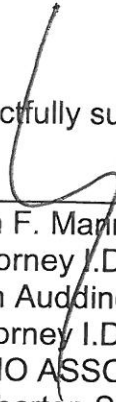
WHEREFORE, plaintiff requests that this Court enter judgment in his favor and against defendant Kevin P. Black, MD, jointly and severally, and the relief which follows:

- I. That plaintiff be awarded compensatory damages as proven at trial;

- II. That Plaintiff be awarded punitive damages;
- III. That Plaintiff be awarded interest and damages for prejudgment delay.
- IV. That Plaintiff be awarded further relief as this Court may deem appropriate.

Respectfully submitted,

By:



Steven F. Marino, Esquire
PA Attorney I.D. No. 53034
Joseph Auddino, Esquire
PA Attorney I.D. No. 316752
MARINO ASSOCIATES
301 Wharton Street
Philadelphia, Pa 19147
Telephone: (215) 462-3200
Telecopier: (215) 462-4763
smarino@marinoassociates.net
jauddino@marinoassociates.net

Dated: August 23, 2019

Attorneys for plaintiff

VERIFICATION

The undersigned, having read the attached submission, verifies that the facts set forth in the forgoing are based on information furnished to counsel in the course of this proceeding and are true and accurate to the best of the knowledge, information and belief of the undersigned. The language of the submission is that of counsel and not of the undersigned. To the extent that contents of the submission are that of counsel, the undersigned has relied upon counsel in providing this verification. This Verification is executed subject to the penalties for unsworn falsification to authorities pursuant to 18 Pa.C.S.A 4904.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott G. Ryan", is written over a horizontal line.

Exhibit 1



MEMO

Date: July 23, 2018
 To: Dr. Scott Lynch
 From: Kevin P. Black, M.D. *KPB*
 RE: Fiscal Year 2018/2019 Compensation and Effort

Thank you for your patience as our Medical Center and the College of Medicine have finalized the FY19 budget. The information below represents your FY19 compensation, productivity, and effort detail. I appreciate your many contributions to our department and look forward to working with you in the upcoming year.

COMPENSATION:

<ul style="list-style-type: none"> Base compensation amount, paid in monthly installments, will be: 	\$523,162			
<ul style="list-style-type: none"> The department budgeted an at risk component of your FY19 budgeted total compensation in the amount of: <ul style="list-style-type: none"> You are eligible for an incentive payment, which is not guaranteed. To qualify for the incentive, you must meet a variety of factors which includes your individual as well as departmental productivity relative to budget, patient satisfaction scores, quality and safety measures and completion of medical records within an appropriate time frame. The FY19 department Incentive plan will be sent to you separately. 	\$130,784			
<ul style="list-style-type: none"> Compensation percentile (includes base and budgeted incentive), based on the benchmark below: <ul style="list-style-type: none"> Source: AAMC Summary Statistics on Medical School Faculty Comp for All Schools; M.D. or Equivalent Degree, Clinical Science Depts/Specialties; Total Comp In Thousands of Dollars, 2016 - 2017 	61 st ile			
<p>We continue to anticipate that the FY19 Physician Compensation Guidelines will require that your normalized RVU productivity must be at least at the 25thile of the benchmark in order to qualify for any component of an Incentive. In order to be eligible for the clinical component of the Incentive, your Normalized productivity RVU percentile must be 5 percentile points greater than the Compensation percentile.</p>				
Specialty	Rank	25 th ile	50 th ile	75 th ile
Orthopaedic Surgery	Professor	\$422,000	\$583,000	\$751,000

PRODUCTIVITY:

The department will be using the following RVU productivity benchmark for you:

<ul style="list-style-type: none"> Based on the visit and OR case (if applicable) volumes you submitted: <ul style="list-style-type: none"> Your budgeted Actual RVUs will be: Your budgeted Normalized RVUs (to your CFTE) will be: 	2,369		
<ul style="list-style-type: none"> Normalized productivity RVU percentile, based on the benchmark below: <ul style="list-style-type: none"> Source: Vizient 	51 st ile		
Specialty	25 th ile	50 th ile	75 th ile
Orthopaedic Average	6,783	9,000	11,339

POSITION EFFORT ALLOCATION:

	Effort:	
FTE:	1	
Clinical Effort:	0.26	
GME Teaching/Service/Admin:	0.03	<i>This effort includes: administrative and research time; teaching residents and medical students in association with patient care activities; attendance at morning conference - including divisional specialty conference, confidential peer review, grand rounds and guest speaker presentations, occasional lectures to medical students in years 1 and 2; and assigned departmental and hospital committees. Examples of the latter might include the core competency committee for resident education, activities related to screening of residency applicants, or participating in ad hoc activities related to hospital efficiency.</i>
Other:		
<ul style="list-style-type: none"> "Specific Roles which will be outlined depending on person": 	0.49 0.20 0.02	0.49 = PSU Intercollegiate Athletics Team Physician and Athletic Medicine Director 0.20 = Adult BJI Clinic Medical Director 0.02 = Division Chief

Exhibit 2



PennState Health
Milton S. Hershey Medical Center

**Penn State Faculty Appointment For
Milton S. Hershey Medical Center Clinical Staff**

Fixed Term Appointment

The President of The Pennsylvania State University has approved your appointment to the faculty of the University as follows:

Name: Scott Lynch, M.D., M.S.

Department: Orthopaedics and Rehabilitation

Rank and Title: Professor of Orthopaedics and Rehabilitation

Period of Appointment: 07/01/2018 – 06/30/2019

This appointment is without remuneration, and you will not be employed by the University. You will be employed by Milton S. Hershey Medical Center, and this faculty appointment will automatically terminate in the event you are no longer employed by the Medical Center.

In accepting this appointment, you are entitled to the benefits of, and agree to abide by the regulations in force during your appointment with the University with respect to the patenting of discoveries or inventions resulting from research, and copyright policies.

If you agree to these terms of your appointment, please sign on the line below and return this document to your Department Chair.

A Craig Hillemeier M.D.

A. Craig Hillemeier, M.D.
Dean, Penn State College of Medicine
Chief Executive Officer, Penn State Health
Senior Vice President for Health Affairs, Penn State

Accepted: _____

Scott Lynch
(Signature)

Date: 6/15/18

Exhibit 3

Re: ICA medical autor .my

Black, Kevin

Sun 3/10/2019 5:02 PM

To: Lynch, Scott <slynch@pennstatehealth.psu.edu>;

Cc: Black, Kevin <kblack@pennstatehealth.psu.edu>;

Scott: I've had some time to look over this and think about it. As written, I can't support it. It's not because I agree or disagree with you, but largely due to the fact that I'm an outsider on this and don't have enough insight into the reality of the situation. There are also some things here that seem to be extremely challenging from an HR, compliance, procedural perspective. I also want to make certain that your voice is heard and your concerns are reviewed and appropriately addressed. I saw Kim Lansford in passing the other day and, although we did not have a formal conversation, my impression was that she is aware and involved. I do think your concerns need a formal review and open discussion with stakeholders. Would you like for me to work with you to put something together? Kevin

From: Lynch, Scott <slynch@pennstatehealth.psu.edu>

Date: March 6, 2019 at 9:39:14 AM EST

To: Black, Kevin <kblack@pennstatehealth.psu.edu>

Subject: ICA medical autonomy

Kevin,

I wanted to follow-up on our meeting from a couple of weeks ago. I had mentioned some of the recommendations that I had for ICA to ensure medical autonomy. I am attaching them here for you to further consider them. I also gave them to Bob Boland, the Integrity Officer. As we discussed, I don't feel that there are good protections in place to stop the attempts by the coaches and staff, particularly Coach Franklin, to interfere with medical decisions. There were several examples of these episodes that we had discussed. As I had expressed at the meeting, I believe that the current situation, where the coach can attempt to influence medical care is dangerous for the student-athletes. In my opinion, and you did not disagree, I believe I am being replaced because of my refusal to give in to pressure to change my medical decision making. The fact that Charmelle asked you to talk to me about saying this is also concerning to me. You said that you thought I had it under control. That was true while I was in the position. However, the fact that Sandy Barbour can come to you and demand to make the change shows that if Dr. Sebastianelli doesn't also give in to their demands, he will also be replaced. It shouldn't be about the coach trying to put a physician in place that he can control. I was a bit shocked when you told me that Coach Franklin had been calling around to ask about Dr. Sebastianelli. It's rather obvious to me that he was doing this to see if Dr. Sebastianelli was easier to control than me. I had been working with Bob Boland within the system to try to make some of these changes, but that is no longer possible. I hope you will consider supporting these changes as I outlined, so we can protect the student-athletes.

thanks

Scott

Scott Lynch, MD
Professor
Director of Orthopaedic Sports Medicine Penn State Hershey Med Center
Practice Site Medical Director Adult Bone and Joint Clinic
Penn State Hershey Medical Center
Department of Orthopaedics
30 Hope Dr., EC-089
PO Box 859
Hershey, PA 17033-0859
office phone (717) 531-5638

EXHIBIT 4

Lynch, Scott

From: Black, Kevin
Sent: Wednesday, February 06, 2019 2:03 PM
To: Sebastianelli, Wayne; Lynch, Scott
Cc: Gibbons, Tiffany
Subject: Apologies
Attachments: Athletic Medicine Leadership.pdf

My apologies but I thought I had copied both of you on this document that was sent to ICA yesterday. Not an excuse, but I think I got lost in the revisions. This was sent to our physicians that have effort allocated to it. Kevin



February 4, 2018

HERSHEY
Mail Code EC089
30 Hops Drive, Bldg. A
Hershey, PA 17033
717-531-5838
717-531-0498 Fax
Adult Reconstruction
Foot & Ankle
Hand
Metabolic Bone Disease
Musculoskeletal Oncology
Pediatric Orthopaedics
Podiatry/Diabetic Foot
Primary Care Sports Medicine
Shoulder & Elbow
Spine
Sports Medicine

Orthopaedic Trauma
Mail Code H089
500 University Drive
Hershey, PA 17033
717-531-1363
717-531-0093 Fax

STATE COLLEGE
1850 E. Park Avenue, Suite 112
State College, PA 16803
814-865-3666
814-863-7803 Fax

General Orthopaedics
Hand
Orthopaedic Sports Medicine
Pediatric Orthopaedics
Primary Care Sports Medicine
Physical Medicine
Physical Therapy

MUSCULOSKELETAL SCIENCES
Mail Code H089
500 University Drive
Hershey, PA 17033
717-531-4819
717-531-0349 Fax

Dear Colleagues:

For over 40 years Penn State Orthopaedics has had the honor of working with a diverse team of professionals in University Park with the singular goal of providing outstanding care to the student athletes at Penn State University. While enjoying countless successes on and off the field during that time, the Athletic Medicine team has also continuously reflected upon and worked together to identify new ways to prevent injury and provide the highest quality care. Since 2014 Dr. Scott Lynch has worked tirelessly to care for our student athletes while maintaining his patient care and leadership responsibilities in Hershey, commuting to and from State College on a weekly basis and more frequently when necessary. In parallel, health care delivery, including sports medicine, has become increasingly complex and time consuming. This includes both the actual delivery of medical care and the associated administrative responsibilities.

It is with this in mind that I write to inform you of my decision to implement what I believe is a necessary change in the leadership of Athletic Medicine. Effective March 1, 2019, Dr. Wayne Sebastianelli will assume responsibility as Director of Athletic Medicine and football team physician. Dr. Sebastianelli is the Kalenak Professor of Orthopaedics and has cared for student athletes at Penn State for 27 years. Many of you are already familiar with Dr. Sebastianelli as he has resided in State College and worked at Mt. Nittany Medical Center since 1992. I am confident that our student athletes will benefit from his constant presence and his relationship with the local medical community, both of which are essential components of their care.

I want to thank Dr. Lynch, Professor in the Department of Orthopaedics and Rehabilitation, and acknowledge his work in this role for the past five years. He has led with consummate integrity and professionalism and, while providing outstanding care directly, has played a critical role in elevating the collective efforts of the Athletic Medicine Program in its entirety. It is, without question, a better and stronger program. This transition will provide opportunity for Dr. Lynch to commit more of his time and effort to a long and expanding list of responsibilities in Hershey, which includes serving as Director of Orthopaedic Sports Medicine and associate team physician for the Hershey Bears Hockey Club. In addition, he is the Practice Site Medical Director for the Bone and Joint Institute at Hershey Medical Center, the busiest practice site in all of Penn State Health with over 60,000 patient visits annually.

Both Drs. Lynch and Sebastianelli are trusted colleagues and personal friends that I have been fortunate to work with for many years. This change is being made consistent with my belief that it is in the best interests of the student athletes of Penn State University, Penn State Health, and the Department of Orthopaedics and Rehabilitation. I thank you for your support during this transition and look forward to the continued accomplishments of Athletic Medicine and Penn State Orthopaedics in the years ahead.

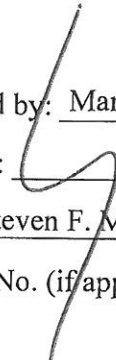
Sincerely,

Kevin P. Black, M.D.
Professor and C. McCollister Everts Chair
Department of Orthopaedics and Rehabilitation
Vice Dean for the University Park Regional Medical Campus

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Marino Associates

Signature:  _____

Name: Steven F. Marino, Esquire

Attorney No. (if applicable): 53034