

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

Dr. Carlo M. Croce,	:	Judge Karen Phipps
	:	
Plaintiff,	:	Case No. 18CV010788
	:	
V.	:	
	:	
The Board Of Trustees Of	:	
The Ohio State University.	:	
	:	
Defendant.	:	

**DEFENDANT THE BOARD OF TRUSTEES OF THE OHIO STATE UNIVERSITY’S  
MEMORANDUM IN OPPOSITION TO PLAINTIFF DR. CARLO M. CROCE’S  
MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

**I. Introduction.**

1. “When reviewing academic decisions, courts must defer to the professional judgment of the college and its faculty.” *Marx v. Ohio State Univ. Coll. of Dentistry*, 10th Dist. Franklin No. 95APE07-872, 1996 WL 87462, at \*5 (Feb. 27, 1996) (citing *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (10th Dist. 1992); *see also Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226, 106 S.Ct. 507, 514, 88 L.Ed.2d 523 (1985) (declaring federal courts unsuited “to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of public educational institutions”).

2. In his Motion for a Temporary Restraining Order And Preliminary Injunction (the “Motion for a TRO”), plaintiff Dr. Carlo M. Croce asks this Court to prohibit defendant the Board of Trustees (the “Board”) of The Ohio State University (“Ohio State”) from removing him as Chair of the Department of Molecular Virology, Immunology, and Medical Genetics n/k/a the Department of Cancer Biology and Genetics (the “Department”). Dr. Croce’s Motion for a TRO is nine days late, however. His last day serving as Chair of the Department was December 31,

2018.

3. Additionally, Dr. Croce devotes his Motion for a TRO to the provisions of Ohio Administrative Code Section 3335-3-35(B) related to removing a person from his/her four-year term as Chair. In doing so, he ignores a necessary condition precedent to his position. Specifically, in order for the “removal” provision to apply, Dr. Croce must first establish he was duly appointed as Chair under Section 3335-3-35(A) by the Board for the four-year term he claims commenced in October, 2016. Dr. Croce cannot provide such proof, because no such appointment occurred.

4. At one point in time, Dr. Croce did serve in a Board-appointed chair position. In 2004 and then again in 2008, Dr. Croce was appointed by the Board to four-year terms as Chair of the Department. Dr. Croce was not reappointed by the Board to another four-year term after his 2008 appointment expired in 2012, however. Instead, he continued to serve as Chair on an at-will basis. More than two months ago – on November 3, 2018 – Dr. Croce was notified he would no longer be serving as Chair of the Department effective January 1, 2019. Subsequently, on December 12, 2018, Dr. Croce was notified that Ohio State intended to name an interim Chair as a placeholder to administer the Department while it conducted a national search for a Chair.

5. Dr. Croce now claims he is entitled to remain as Chair of the Department. He is incorrect and cannot establish the elements required for a temporary restraining order (“TRO”). Pursuant to the Ohio Administrative Code, only the Board can appoint a Chair and a Chair is limited to a self-expiring term of four years. *See* O.A.C. § 3335-3-35(A). Dr. Croce’s second and last four-year term expired on September 30, 2012. From that date, until December 31, 2018, Dr. Croce was serving at-will as Chair and was not in the middle of a four-year term as he claims. Thus, because only the Board can reappoint Dr. Croce to a four-year term, and they did not do so after his last term expired on September 30, 2012, Dr. Croce lacks any legal basis to remain as

chair. As such, he cannot prove a substantial likelihood of success on the merits.

6. Dr. Croce also suffers no irreparable harm. He remains employed at Ohio State and continues to receive his full salary of \$804,461. Additionally, there is no exigent emergency, and Dr. Croce's unhurried pace in this litigation to date confirms this. Dr. Croce has been aware for more than two months – since November 3, 2018 – that he would no longer be Chair effective January 1, 2019. When he filed suit on December 31, 2018, he made no claims in his Complaint of an emergency need for a TRO. The New Year arrived, more than a week has now gone by, and Dr. Croce is no longer Chair. Related to this, and contrary to Dr. Croce's claims in his Motion for a TRO, Ohio State's intention on January 10, 2019, is to name an *interim, placeholder* Chair to administer the Department while a search is conducted for a new Chair and while the issues raised in this matter are litigated. Ohio State's naming of an interim, placeholder Chair to administer the Department while it conducts a search for a new Chair, and while Dr. Croce's claims in this suit are addressed, does not constitute an emergency.

7. In contrast, Ohio State will be harmed if Dr. Croce is reinstated as Chair, and thereby, Ohio State cannot name an interim Chair. In the current era, research funding requires compliance. Compliance starts with the Department Chair. A recent annual review has determined the scope of concerns involving Dr. Croce's performance as Chair. *See* Ex. A, Oct. 25, 2018 Annual Review. Dr. Croce is well aware of the compliance and administrative issues that have occurred on his watch. If necessary, these compliance and administrative issues will be presented in more detail at the hearing of this matter.

8. The relief Dr. Croce seeks via his TRO is affirmative, in that he seeks an after-the-fact reinstatement as Chair. That is not preserving the status quo. That is changing the status quo. Dr. Croce bears the burden of proving he is entitled to a TRO by clear and convincing evidence.

He cannot meet that burden here. Dr. Croce has no entitlement to the relief he seeks and his Motion should be denied.

**II. Factual Background.**

9. On July 9, 2004, the Board appointed Dr. Croce as Chair of the Department for an initial four-year term running from “October 1, 2004, through September 30, 2008”:

**PERSONNEL ACTIONS** Resolution No. 2005-10

BE IT RESOLVED, That the personnel actions as recorded in the Personnel Budget Records of the University since the June 4, 2004 meeting of the Board, including the following Appointments/Reappointments, Appointments/Reappointments of Chairpersons/Directors, Reappointment of Principal Administrative Official, Leaves of Absence Without Salary, Professional Improvement Leave, and Emeritus Titles, and salary rolls with promotion and tenure, as detailed in the University Budget, be approved.

BE IT FURTHER RESOLVED, That the Medical Staff Appointments approved May 25, 2004, by The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute Board, be ratified.

Appointments

Name: DEBORAH A. BALLAM  
Title: Interim Assistant Vice Provost for Women's Policy Initiatives and Interim Director of The Women's Place  
Office: Academic Affairs  
Term: July 1, 2004, through December 31, 2004  
Consent: Appointment: Professor, Department of Finance

Name: CARLO M. CROCE  
Titles: Chairperson and Professor  
Department: Molecular Virology, Immunology, and Medical Genetics  
Term: October 1, 2004, through September 30, 2008  
Consent: Appointment: Director, Human Cancer Genetics Program, Comprehensive Cancer Center/James Cancer Hospital and Solove Research Institute  
Present Positions: Chairman and Professor, Department of Microbiology and Immunology, and Director, Kimmel Cancer Center, Thomas Jefferson University, Jefferson Medical College

Ex. B, Excerpt of July 9, 2004 Board of Trustees Meeting Minutes, at 18; *see also* Ex. 1 to Pl.’s Compl., at 1 (stating appointment as Chair is contingent upon approval by the University Board of Trustees “in compliance with the rules and regulations of The Ohio State University”).

10. At its September 18 and 19, 2008 meeting, the Board appointed Dr. Croce to a second four-year term as Chair of the Department running from “October 1, 2008, through September 30, 2012”:

Appointments/Reappointments of Chairpersons/Director

ROBERT E. BURNKRANT, Department of Marketing and Logistics, effective October 1, 2008, through September 30, 2009.

CARLO M. CROCE, Department of Molecular Virology, Immunology and Medical Genetics, effective October 1, 2008, through September 30, 2012.

Ex. C, Excerpt of Sept. 18 and 19, 2008 Board of Trustees Meeting Minutes, at 234.

11. After September 30, 2012, the Board never reappointed Dr. Croce to another four-year term. *See generally* Board of Trustees Meeting Minutes, available at <https://trustees.osu.edu/university-board/archived-meeting-minutes> (last accessed Jan. 8, 2019).

12. Since October 1, 2012, Dr. Croce has served as Chair of the Department on an at-will basis.

13. On November 3, 2018, Dean Craig Kent met with Dr. Croce and informed him that he would no longer serve as Chair effective January 1, 2019. *See* Pl.’s Compl. at ¶ 9 (alleging “[o]n or about November 3, 2018, Dr. K. Craig Kent (“Kent”), Dean of the OSU College of Medicine, instructed Plaintiff to ‘step down’ from his position as Chair of the Department of Cancer Biology and Genetics within the College of Medicine”).

14. On November 21, 2018, Dean Kent sent an email announcing Dr. Croce no longer would serve as Chair “effective January 1, 2019.” Ex. D, Nov. 21, 2018 K. Craig Kent Leadership Announcement, at 1. In response, Dr. Croce’s counsel appeared on local television a week later stating it was “inappropriate” for Ohio State “to do something like this to a man of such stature.” *See* Nov. 28, 2018 Interview, available at <https://abc6onyourside.com/news/local/osu-department-chair-forced-to-step-down-without-a-reason> (last accessed Jan. 8, 2019).

15. On December 12, 2018, Dr. Croce attended a faculty meeting during which Dean Kent announced Ohio State was planning to name an interim Chair while also undertaking a national search for a replacement Chair. Following this meeting, Wendy Horton, Chief

Administrative Officer in the College of Medicine, sent an email to faculty, including Dr. Croce, seeking recommendations for individuals to serve on the search committee. *See* Ex. E, Dec. 12, 2018 Horton Email To Cancer Biology and Genetics Faculty.

16. Though Dr. Croce no longer serves at Chair of the Department, he remains employed by Ohio State as a faculty member and continues to receive his salary of \$804,461. *See* Pl.’s Compl. at ¶¶ 3, 12 (alleging he “would cease serving as Chair” only); *see also* Ohio State Human Resources Statistics and Reports, Salaries.<sup>1</sup> Dr. Croce does not allege any salary loss by virtue of no longer serving as Chair. *See generally* Pl.’s Compl. Dr. Croce also has full access to his labs and research.

**III. Applicable Legal Standards.**

17. Dr. Croce bears the burden of proving his entitlement to injunctive relief by clear and convincing evidence. *Escape Enterprises, Ltd. v. Gosh Enterprises, Inc.*, 2005-Ohio-2637, ¶ 22 (10<sup>th</sup> App. Dt.).

18. Courts analyze four factors to determine whether to issue a TRO or injunction under Ohio R. Civ. Pro. 65:

- (1) whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits;
- (2) whether the plaintiff has shown that irreparable injury will result if the preliminary injunction is not granted;
- (3) whether issuance of a preliminary injunction would cause substantial harm to others; and
- (4) whether a preliminary injunction would serve the public interest.

*Escape Enterprises* at ¶ 22; *Charles Penzone, Inc. v. Koster*, 2008-Ohio-327 at ¶ 9 (10<sup>th</sup> App. Dt.).

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<sup>1</sup> *See* <https://apps.hr.osu.edu/Salaries/Home/Salaries?Firstname=Carlo&Lastname=Croce&Funding=University&WhichSource=Salaries&Year=0&IsValid=True> (last accessed Jan. 8, 2019).

19. Ohio courts refuse to grant temporary restraining orders absent an “unusual emergency” in which there is an “imminent threat of harm that requires immediate court consideration.” *See, e.g. Hamilton v. Ohio Dep’t of Health*, 2015-Ohio-4041, ¶ 9, 42 N.E.3d 1261, 1266 (recognizing trial court’s denial of temporary restraining order); Civ. R. 65(A) 1970 Staff Note (stating a TRO “contemplates the unusual emergency type situation where immediate action is required”).

**IV. Dr. Croce Has Failed To Produce Clear And Convincing Evidence Showing A Substantial Likelihood Of Prevailing On The Merits.**

20. University Faculty Rule 3335-3-35, codified as Section 3335-3-35 of the Ohio Administrative Code, governs “Chairs of departments, directors of schools,” and provides in relevant part that “*the board of trustees shall appoint each chair and director for a term of four years* subject to the annual review provisions of the office of academic affairs.” *See* O.A.C. § 3335-3-35(A) (emphasis added).

21. Pursuant to the Ohio Administrative Code, a Department Chair must be formally appointed by the Board. *See id.* The term of an appointment as Chair is limited to four years. *See id.*; *see also Willson v. Bd. of Trustees of Ohio State Univ.*, 10th Dist. No. 91AP-144, 1991 WL 274862, at \*10 (Dec. 24, 1991) (recognizing the role of the Board of Trustees as the “appointing authority”). Dr. Croce admits these facts. In his Motion for a TRO, Dr. Croce specifically states that “*the Board of Trustees appoints a department chair for a term of four years.*” *See* Pl.’s Mot. for TRO, at 3 (emphasis added). By his own admission, a Chair appointment expires after four years. *See id.* Consistent with this, the removal provision upon which Dr. Croce relies does not apply to an at-will Chair and is operative only “during a four-year term.” *See* O.A.C. § 3335-3-35(B) (“The president or his or her designee may remove a chair or director *during a four-year term* after consultation with the voting faculty and dean of the unit involved.”) (emphasis added).

22. Dr. Croce was appointed by the Board of Trustees to consecutive four-year terms in 2004 and 2008 respectively, *but was not reappointed to another four-year term after the second term expired on September 30, 2012*. See Ex. B, Excerpt of July 9, 2004 Board of Trustees Meeting Minutes at 18; Ex. C, Excerpt of Sept. 18 and 19, 2008 Board of Trustees Meeting Minutes, at 234; *see generally* Board of Trustees Meeting Minutes, available at <https://trustees.osu.edu/university-board/archived-meeting-minutes> (last accessed Jan. 8, 2019). Absent the required appointment by the Board, Dr. Croce was not, as a matter of law, serving a four-year term as Chair between October 1, 2012 and December 31, 2018. See O.A.C. § 3335-3-35(A) (requiring “the board of trustees *shall* appoint each chair and director for a term of four years”).

23. Between October 1, 2012 and December 31, 2018, Dr. Croce served as Chair on an at-will basis. See *Fennessey v. Mt. Carmel Health Sys., Inc.*, 2009-Ohio-3750, ¶ 8 (10th Dist.) (“Ohio follows the doctrine of employment-at-will, whereby an employment agreement of indefinite duration is presumed to be terminable at will by either party for any reason not contrary to law”); *Mers v. Dispatch Printing Co.*, 19 Ohio St. 3d 100, 103 (1985) (stating Ohio “has long recognized the right of employers to discharge employees at will”).

24. Dr. Croce lacks any due process property rights in his continued employment as Chair. To have a property interest in his employment, “a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” *Slyman v. City of Piqua*, 494 F. Supp. 2d 732, 735 (S.D. Ohio 2007), *aff’d*, 518 F.3d 425 (6th Cir. 2008). As discussed above, Dr. Croce was never reappointed to a four-year term following his 2008-2012 term, and accordingly, he has no entitlement to serve as Chair until 2020. In this regard, the Sixth Circuit has held that “*tenured*



*university professors [do] not have a constitutionally protected property interest in administrative posts.”* Crosby v. Univ. of Kentucky, 863 F.3d 545, 552–53 (6th Cir. 2017) (emphasis added) (quoting *Stringfield v. Graham*, 212 Fed.Appx. 530, 538 (6th Cir. 2007)).

25. Dr. Croce’s Motion for a TRO seeks to apply the removal provision of Ohio Administrative Code Section 3335-3-35, but fails to establish a condition precedent, *i.e.*, that Dr. Croce was duly appointed to the four-year term he claims started in October, 2016. Absent clear and convincing proof of such an appointment, Dr. Croce lacks any basis to continue serving as Chair and the removal provisions of Ohio Administrative Code Section 3335-3-35 are neither necessary nor relevant.

26. Dr. Croce has offered no clear and convincing proof establishing he was appointed to another four-year term after September 30, 2012. He also has failed to identify any regulation, statute, contract, or policy granting him the right to serve as Chair. Thus, Dr. Croce has no legal basis to claim he is entitled to remain as Chair, and he does not have a substantial likelihood of prevailing on his claim. As such, Dr. Croce has failed to satisfy the burden of proof necessary for a temporary restraining order. *See Escape Enterprises* at ¶ 22 (entitlement to injunctive relief must be shown by “clear and convincing evidence”); *see also* Civ. R. 65(A) (requiring proof “by affidavit or by verified complaint” to support a temporary restraining order or other injunctive relief). Absent any legal entitlement to remain as Chair, Dr. Croce cannot prevail on the merits and has not supported his request for a temporary restraining order. His Motion should be denied.

**V. Dr. Croce Cannot Show Irreparable Harm Because He Continues To Be Employed By Ohio State And Continues To Earn His Salary. He Also Cannot Demonstrate An Emergency Situation Justifying A TRO Or That A TRO Is The Appropriate Remedy Here.**

27. Dr. Croce has not been terminated from his position as professor in the College of Medicine and continues to earn his salary of \$804,461. *See* Pl.’s Compl. at ¶¶ 3, 12 (alleging Dr.

Croce would “cease serving as Chair” only); *see also* Ohio State Human Resources Statistics, <https://apps.hr.osu.edu/Salaries/Home/Salaries?Firstname=Carlo&Lastname=Croce&Funding=University&WhichSource=Salaries&Year=0&IsValid=True> (last accessed Jan. 8, 2019).

28. Dr. Croce also continues to conduct cancer research at Ohio State, continues to have full access to his lab, and continues to maintain an office at Ohio State. Dr. Croce does not allege any deprivation of these resources by Ohio State.

29. At most, Dr. Croce has been told he is no longer the holder of an administrative role, that an interim, placeholder Chair will be named, and that his administrative responsibilities as Chair have been removed.

30. Ohio courts have refused to grant temporary restraining orders absent an “unusual emergency” in which there is an “imminent threat of harm that requires immediate court consideration.” *See, e.g. Hamilton v. Ohio Dep’t of Health*, 2015-Ohio-4041, ¶ 9, 42 N.E.3d 1261, 1266 (recognizing trial court’s denial of TRO); Civ. R. 65(A) 1970 Staff Note (stating a TRO “contemplates the unusual emergency type situation where immediate action is required”).

31. Dr. Croce admits he learned on November 3, 2018, that he would cease serving as Chair effective January 1, 2019. *See* Pl.’s Compl. at ¶ 12. In fact, his counsel appeared on local television on November 28, 2018 and stated Dr. Croce was notified in November, 2018 that he no longer would serve as Chair. *See* Nov. 28, 2018 Interview, available at <https://abc6onyourside.com/news/local/osu-department-chair-forced-to-step-down-without-a-reason> (last accessed Jan. 8, 2019). Dr. Croce also learned through a faculty meeting on December 12, 2018, that Ohio State intended to name an interim Chair to serve temporarily and at-will while Ohio State conducted a national search for a new Chair. Yet, he did not allege the existence of an emergency in his Complaint filed on December 31, 2018. He also did not seek, on or before

December 31, 2018, the entry of a TRO requiring that Ohio State keep him on as Chair.

32. Given the approximately two months of advance notice provided to Dr. Croce, and his failure to seek a TRO on or before December 31, 2018, he cannot demonstrate an “unusual emergency” justifying a TRO based on the fact Ohio State seeks to name an interim Chair. If Dr. Croce intended to seek a TRO permitting him to remain as Chair, he needed to do so *before* January 1, 2019. He did not and his time for doing so has passed.

33. Dr. Croce also claims there is no adequate remedy at law because no amount of money can compensate him for the loss of his title as Chair. *See* Pl.’s Mot. for TRO, at 6. At the outset, Dr. Croce is incorrect in his characterization of the Chair position as a title. The Chair of the Department must perform administrative duties for the management and function of the Department. *See* O.A.C. § 3335-3-35(C)(1-14). Additionally, it is axiomatic that a TRO is intended to “preserve the status quo of the parties pending final adjudication of the case upon the merits.” *Yudin v. Knight Indus. Corp.*, 109 Ohio App. 3d 437, 439 (6<sup>th</sup> Dist. 1996). Where Dr. Croce already has been removed as Chair, a TRO prohibiting Ohio State from removing Dr. Croce is not appropriate and does not maintain the status quo.

34. Dr. Croce has failed to satisfy his burden of proving irreparable harm by clear and convincing evidence or an emergency of any kind. He is not entitled to a temporary restraining order.

**VI. A Temporary Restraining Order Will Cause Harm To Ohio State, Its Staff, Faculty And Students.**

35. Ohio State informed Dr. Croce on November 3, 2018, that, effective January 1, 2019, he would no longer serve as Chair of the Department. *See* Pl.’s Compl., at ¶ 12; *see also* Ex. D, Nov. 21, 2018 Leadership Announcement (announcing Dr. Croce no longer would serve as chair effective January 1, 2019).

36. Ohio State seeks to move in a different direction in regard to the Chair of the Department. For the reasons discussed above related to the fact Dr. Croce is not in the middle of a duly appointed four-year term as Chair of the Department, Ohio State is entitled to do what it did.

37. “When reviewing academic decisions, courts must defer to the professional judgment of the college and its faculty.” *Marx*, 1996 WL 87462, at \*5; *see also Regents of Univ. of Michigan*, 474 U.S. at 226 (declaring federal courts unsuited “to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of public educational institutions”).

38. If Dr. Croce’s request for a temporary restraining order is granted, Ohio State’s determination of who should be named the Chair of the Department will have been interfered with, thereby causing Ohio State, and the public, significant harm. A temporary restraining order is inappropriate here.

**VII. A Temporary Restraining Order Will Cause Undue Harm To The Public.**

39. Dr. Croce’s request to remain as Chair does not serve the public interest because it turns Ohio Administrative Code Section 3335-3-35 on its head and seeks to prevent the removal of a person – Dr. Croce – who was never duly appointed by the Board for his claimed four-year term at issue in his Complaint. It also seeks to use this Court to judicially appoint Dr. Croce to a four-year term to which he was not appointed by the Board.

40. As a publically funded University, Ohio State has an obligation to operate efficiently and responsibly. To do so requires capable administrators. The naming of an interim Chair is not a permanent solution, but provides temporary leadership for the responsible and efficient management of the Department, which has not had a Chair since December 31, 2018.

**VIII. Bond Is Required As A Matter Of Law.**

41. By its express terms, Civil Rule 65(C) requires Dr. Croce to post a bond: “[n]o *temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond[.]*” Civ. R. 65(C) (emphasis added). In accordance with this Rule, Ohio Courts have found “[a]n injunction cannot become legally effective until the bond upon which its issuance is predicated is executed and approved in the manner required, or until security is deposited in lieu of the bond.” *Back v. Faith Properties, LLC*, 12th Dist. Butler No. CA2001–12–285, 2002-Ohio-6107, ¶ 20. As set forth above, Ohio State will suffer harm if Plaintiff’s Motion for a TRO is granted, and accordingly, a bond is requested.

**IX. Conclusion.**

42. Dr. Croce has not presented clear and convincing evidence demonstrating entitlement to a TRO. He does not have a substantial likelihood of prevailing on the merits of his claim and he is suffering no irreparable harm. Both Ohio State and the public, however, will suffer harm if the requested TRO is entered. For the foregoing reasons, Ohio State respectfully requests that this Court deny Dr. Croce’s Motion for a Temporary Restraining Order in all respects and decline to reinstate Dr. Croce as Chair in violation of the appointment procedures of the Ohio Administrative Code.

MICHAEL DeWINE  
ATTORNEY GENERAL OF OHIO

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Special Counsel for Defendant Board Of Trustees Of The  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was uploaded to the Clerk's electronic filing system this 10th day of January, 2019, which will cause service upon the following, who have additionally been served via electronic mail:

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THE OHIO STATE UNIVERSITY

College of Medicine

October 25, 2018

K. Craig Kent, MD  
Dean, College of Medicine

Re: Annual Review of Dr. Croce

Dear Dean Kent,

As requested, during the month of October 2018, we initiated performance reviews for all College of Medicine Basic Science Chairs and Center/Institute Directors. On Tuesday, October 16<sup>th</sup> we performed the annual performance review of Dr. Carlo Croce, Chair of the Department of Cancer Biology and Genetics in the College of Medicine.

Following our meeting with Dr. Croce, as well as our review and assessment of the current Departmental finances, structure, extramural funding, educational programming, and vision for mentoring trainees and faculty we find numerous areas of concern regarding Dr. Croce's performance as a Chair in the College of Medicine at The Ohio State University.

1. **Dr. Croce has an extensive level of travel and delegates critical leadership roles and decisions to other department members.** Dr. Croce seemed unaware of the number of travel days, and indicated that in his view the travel is good for the University because he is representing OSU at these various meetings. He also stated that he was frequently in the office and laboratory on the weekends. In part because of his travel commitments he has delegated many of the routine managerial tasks to other faculty members. As an example, Dr. Croce has delegated faculty reviews to Dr. Fishel. The annual review form that is completed by the faculty members provides no specific guidance to them. Although Dr. Fishel apparently meet with the faculty members as part of the annual review, the meetings with Dr. Croce and the faculty members tends to be brief.
2. **Dr. Croce has failed to provide appropriate evaluation and guidance for the faculty.** As noted above, discussions with faculty about their academic progress tend to be brief, and do not provide guidance for those who are not meeting expectations. The College has frequently emphasized the expectation of Chairs at Ohio State to establish formal mentoring for their faculty and trainees. Despite these clear expectations, Dr. Croce has significantly deviated from these expectations. During our meeting Dr. Croce noted that, "they know what they have to do, ...and if they [faculty] are unable to take care of themselves, they are a lost cause." When discussing mentoring of junior faculty, he noted "Holding the hands of a 40 or 50 year old is pointless." He indicated that he has an "open door" policy and that faculty members are readily able to approach him.
3. **Dr. Croce has been resistant to following normal procedures for developing and vetting faculty letters of offer and determining salary parameters. There have been several instances in this past year where excessive salaries have been quoted to potential recruits that are beyond the ranges utilized by all other Departments.** In our discussion he acknowledged that he disagreed with these standards but gave no indication that he would comply with the benchmarks used for faculty salaries.
4. **Dr. Croce has also not met some of the basic chair responsibilities regarding governance of the Department.** As an example, the Ohio State University Office of Academic Affairs requires Chairs to periodically review the primary governance documents including the Patterns of Administration and the Appointment, Promotion and Tenure Document. The Department has frequently been asked to provide updated documents which were seriously antiquated (since







## THE OHIO STATE UNIVERSITY

1999). As a result, the guidelines for faculty evaluation and promotion are obsolete and inconsistent with the standards in other departments. The Department did finally submit a new promotion and tenure document, only after an unprecedented intervention of the College of Medicine.

5. **Dr. Croce is deficient in his ability to effectively manage Departmental Staff and maintain compliance within his own leadership team.** As an example, despite significant issues in performance of the Departmental Administrator (documented in letter from Chair to Administrator), and recommendations from College Human Resources, Dr. Croce has not taken action to correct the problems. These serious performance failures noted by Chair include inability to on-board new faculty, 'poor' administrative management, sharing of confidential information, mistakes in travel reimbursement, and inability to manage faculty funds appropriately, and frequent absences. However, most disturbingly, despite the above issues, Dr. Croce endorsed a 10% performance bonus for this administrator shortly after this letter reprimanding her behavior. When challenged at his review with these discordant points, he agreed that this administrator is a "disaster" and "should have been fired". Nevertheless he noted that her performance had improved once there was increased scrutiny of her performance.
6. **Dr. Croce is deficient in his ability to manage university and department finances.** Despite consistent input at annual budget meetings, Dr. Croce has not reduced unallowable staff and faculty effort on university funding. The Department has had 4+ consecutive years of significant deficits that have not been appropriately addressed despite annual input from leadership. For example, movement of research assistant professor from College funds to required grant funding took multiple interventions from Vice Dean for Academic Affairs and potential reduction in staff to ultimately complete task. The Department of Cancer Biology and Genetics has the largest annual budget and receives the largest influx of resources from the College and Comprehensive Cancer Center. Despite this investment, this Department continues to maintain the largest fiscal deficits of any basic science department in the College of Medicine. Further, the Chair, despite multiple warnings from College leadership continues to negotiate start-up and salary packages without consultation or approval from College leadership.
7. **Dr. Croce has failed to provide Departmental leadership related to research compliance.** For example, Dr. Croce has been found to have committed continuing and severe non-compliance in clinical trials that resulted in suspension of that project. This is unprecedented for our Department chairs. While the protocol suspension is now lifted, this lack of oversight on his part sets a poor example for departmental faculty. When asked about this in his review, Dr. Croce noted that this issue was "bullshit" and he "had done nothing wrong".
8. **Dr. Croce has failed to build the educational mission of the Department.** Like all basic science department chairs, in multiple budget meetings, Dr. Croce has been asked to increase departmental course work for undergraduates and graduate students. To date, we are unaware of any new course offerings by this department.

The points above indicate that Dr. Croce continues to be highly focused on his own personal career activities and does not provide sufficient effort and attention to his responsibilities as a chair. Furthermore, many of the issues outlined above seem to reflect a disregard for standard policies and procedures. In fact, we are of the opinion that Dr. Croce fails to meet even the minimal requirements to serve as departmental chair at The Ohio State University.

Sincerely,

Robert Bornstein, PhD  
Vice Dean for Academic Affairs



THE OHIO STATE UNIVERSITY

---

A handwritten signature in cursive script, appearing to read 'Peter J. Mohler', followed by a horizontal line.

Peter J. Mohler, Ph.D.  
Vice Dean for Research

THE OHIO STATE UNIVERSITY  
OFFICIAL PROCEEDINGS OF THE  
ONE THOUSAND FOUR HUNDRED AND FIFTH MEETING  
OF THE BOARD OF TRUSTEES

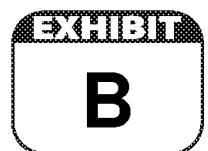
Columbus, Ohio, July 9, 2004

The Board of Trustees met at its regular monthly meeting on Friday, July 9, 2004, at The Ohio State University Longaberger Alumni House, Columbus, Ohio, pursuant to adjournment.

\*\* \*\* \*

Minutes of the last meeting were approved.

\*\* \*\* \*



July 9, 2004 meeting, Board of Trustees

that the names of those persons awarded degrees and certificates be included in the minutes of this meeting.

\*\*\*

**PERSONNEL ACTIONS**

Resolution No. 2005-10

BE IT RESOLVED, That the personnel actions as recorded in the Personnel Budget Records of the University since the June 4, 2004 meeting of the Board, including the following Appointments/Reappointments, Appointments/Reappointments of Chairpersons/Directors, Reappointment of Principal Administrative Official, Leaves of Absence Without Salary, Professional Improvement Leave, and Emeritus Titles, and salary rolls with promotion and tenure, as detailed in the University Budget, be approved.

BE IT FURTHER RESOLVED, That the Medical Staff Appointments approved May 25, 2004, by The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute Board, be ratified.

Appointments

Name: DEBORAH A. BALLAM  
Title: Interim Assistant Vice Provost for Women's Policy Initiatives and Interim Director of The Women's Place

Office: Academic Affairs  
Term: July 1, 2004, through December 31, 2004

Concurrent Appointment: Professor, Department of Finance

Name: CARLO M. CROCE  
Titles: Chairperson and Professor  
Department: Molecular Virology, Immunology, and Medical Genetics

Term: October 1, 2004, through September 30, 2008

Concurrent Appointment: Director, Human Cancer Genetics Program, Comprehensive Cancer Center/James Cancer Hospital and Solove Research Institute

Present Positions: Chairman and Professor, Department of Microbiology and Immunology, and Director, Kimmel Cancer Center, Thomas Jefferson University, Jefferson Medical College

Name: WILLIAM L. MACDONALD  
Title: Dean and Director

Regional Campus: The Ohio State University - Newark

Term: July 9, 2004, through June 30, 2009  
Present Position: Interim Dean and Director, The Ohio State University - Newark

Name: THAD M. MATTA  
Title: Men's Head Basketball Coach  
Department: Athletics  
Term: July 8, 2004, through June 30, 2011  
Present Position: Men's Head Basketball Coach, Xavier University, Cincinnati, OH

September 18 & 19, 2008 meeting, Board of Trustees

THE OHIO STATE UNIVERSITY  
OFFICIAL PROCEEDINGS OF THE  
ONE THOUSAND FOUR HUNDRED AND FORTY-THIRD  
MEETING OF THE BOARD OF TRUSTEES

Columbus, Ohio, September 18 & 19, 2008

The Board of Trustees met on Thursday, September 18 and Friday, September 19, 2008, at The Ohio State University Longaberger Alumni House, Columbus, Ohio, pursuant to adjournment.

\*\* \*\* \*

Minutes of the last meeting were approved.

\*\* \*\* \*



September 18 & 19, 2008 meeting, Board of Trustees

NOW THEREFORE

BE IT RESOLVED, That the Board of Trustees recognizes Congresswoman Deborah Pryce for her many years of distinguished service representing The Ohio State University and the people of Ohio's 15<sup>th</sup> Congressional District.

\*\*\*

**RECOGNITION OF SERVICE - THE HONORABLE RALPH REGULA**

Resolution No. 2009-26

WHEREAS Congressman Ralph Regula was first elected to represent Ohio's 16<sup>th</sup> Congressional District in the U.S House of Representatives in 1972; and

WHEREAS before becoming a Member of Congress, Ralph Regula was a teacher, principal, and member of the Ohio Board of Education and thus understands the challenges facing education; and

WHEREAS Ralph Regula is currently the Dean of the Ohio Delegation and is the second longest currently serving Republican member of the U.S. House of Representatives; and

WHEREAS Ralph Regula's district includes The Ohio State University Ohio Agricultural Research and Development Center (OARDC) and Agricultural Technical Institute (ATI) campus in Wooster, Ohio; and

WHEREAS one of the highest ranking members of the House Appropriations Committee, Ralph Regula has been a staunch supporter of federal funding for higher education, including student financial aid, and basic research which are vitally important to The Ohio State University; and

WHEREAS over his thirty-five years in Congress, Ralph Regula has been a strong advocate for OARDC and ATI programs, faculty, and students, and has fostered the partnership between the campus and the City of Wooster and Wayne County, Ohio; and

WHEREAS on October 12, 2007, Ralph Regula announced that he would retire at the end of his current term in 2009:

NOW THEREFORE

BE IT RESOLVED, That the Board of Trustees recognizes Ralph Regula for his many years of distinguished service representing The Ohio State University and the people of Ohio's 16<sup>th</sup> Congressional District.

\*\*\*

**PERSONNEL ACTIONS**

Resolution No. 2009-27

BE IT RESOLVED, That the personnel actions as recorded in the Personnel Budget Records of the University since the July 11, 2008 meeting of the Board, including the following Appointments, Reappointments, Appointments/Reappointments of Chairpersons/Director, Leave of Absence with Salary, Leaves of Absence Without Salary, Professional Improvement Leaves, Professional Improvement Leaves –

September 18 & 19, 2008 meeting, Board of Trustees

Change in Dates, Emeritus Titles, salary rolls with promotion and tenure, as detailed in the University Budget, be approved.

Appointments

Name: MICHELLE L. JONES  
 Title: Associate Professor (The D.C. Kiplinger Chair in Floriculture)  
 College: Food, Agricultural, and Environmental Sciences  
 Term: October 1, 2008, through September 30, 2013

Name: THOMAS J. KATZENMEYER  
 Title: Senior Vice President  
 Office: University Communications  
 Effective: September 8, 2008

Name: LAURENCE V. MADDEN  
 Title: Professor (The Professorship in Plant Protection)  
 College: Food, Agricultural, and Environmental Sciences  
 Term: October 1, 2008, through September 30, 2013

Name: GREGORY N. WASHINGTON  
 Title: Interim Dean  
 College: Engineering  
 Term: October 1, 2008, through September 30, 2010

Name: CAROLINE C. WHITACRE  
 Title: Vice President  
 Office: Research  
 Term: October 1, 2008, through September 30, 2012  
 Title: Interim Vice President effective August 1, 2008, through September 30, 2008

Name: JESSICA O. WINTER  
 Title: Assistant Professor (The H.C. "Slip" Slider Professorship in Chemical and Biomolecular Engineering)  
 College: Food, Agricultural, and Environmental Sciences  
 Term: October 1, 2008, through September 30, 2013

Reappointments

Name: JAMES N. ALLEN  
 Title: Professor (The Battelle Professorship in Inhalation Therapeutics)  
 College: Medicine  
 Term: July 1, 2008, through June 30, 2012

Name: BARBARA I. KIEFER  
 Title: Professor (The Charlotte S. Huck Professorship in Children's Literature)  
 College: Education and Human Ecology  
 Term: October 1, 2008, through September 30, 2013

Name: JANICE K. KIECOLT-GLASER  
 Title: Professor (The S. Robert Davis Chair in Medicine)  
 College: Medicine  
 Term: July 1, 2008, through June 30, 2012

September 18 & 19, 2008 meeting, Board of Trustees

Name: THOMAS F. MAUGER  
Title: Professor (The Carl M. and Grace C. Baldwin Chair in Ophthalmology)  
College: Medicine  
Term: October 1, 2008, through September 30, 2012

Name: HERBERT B. NEWTON  
Title: Professor (The Esther Dardinger Endowed Chair in Neuro-Oncology)  
College: Medicine  
Term: July 1, 2008, through June 30, 2012

Name: DAVID E. SCHULLER  
Title: Professor (The John W. Wolfe Chair in Cancer Research)  
Hospital/Institute: The Arthur G. James Cancer Hospital and Richard J. Solove Research Institute  
Term: July 1, 2008, through June 30, 2012

Name: E. ANTONIO CHIOCCA  
Title: Professor (The Dardinger Family Endowed Chair in Oncological Neurosurgery)  
College: Medicine  
Term: July 1, 2008, through June 30, 2012

Appointments/Reappointments of Chairpersons/Director

ROBERT E. BURNKRANT, Department of Marketing and Logistics, effective October 1, 2008, through September 30, 2009.

CARLO M. CROCE, Department of Molecular Virology, Immunology and Medical Genetics, effective October 1, 2008, through September 30, 2012.

J. RICHARD DIETRICH, Department of Accounting and Management Information Systems, effective October 1, 2008, through September 30, 2009.

E. CHRISTOPHER ELLISON, Department of Surgery, effective July 1, 2008, through June 30, 2012.

LISA C. FLORMAN\*, Department of History of Art, effective August 1, 2008 through August 31, 2009.

DAVID B. GREENBERGER, Department of Management and Human Resources, effective October 1, 2008, through September 30, 2009.

MICHAEL R. GREVER, Department of Internal Medicine, effective July 1, 2008, through June 30, 2012.

DONALD R. HAURIN, Department of Economics, effective July 1, 2008, through June 30, 2012.

RICHARD K. HERRMANN, Mershon Center for International Security Studies, effective July 1, 2008, through June 30, 2011.

RANDALL L. SCHOLL\*\*, Department of Plant Cellular and Molecular Biology, effective October 1, 2008, through September 30, 2009.



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**From:** K. Craig Kent, MD [<mailto:CommunicationCenter@osumc.edu>]  
**Sent:** Wednesday, November 21, 2018 2:10 PM  
**To:**  
**Subject:** Leadership Announcement



THE OHIO STATE UNIVERSITY  
COLLEGE OF MEDICINE

*A message from the desk of*

K. Craig Kent, MD

Dean, The Ohio State University College of Medicine  
Leslie H. and Abigail S. Wexner Dean's Chair in Medicine

I am writing to announce the transition of the role of Carlo Croce, MD, as chair of the Department of Cancer Biology and Genetics, effective January 1, 2019.



Dr. Croce joined Ohio State's faculty in 2004 and has been chair of the department for 14 years. He has had an extremely successful research career and will continue to focus his efforts on his research. Please join me in thanking Dr. Croce for his service to the department.

I will provide further details about the transition as they become available.

[OneSource](#) [WexnerMedical.osu.edu](#)



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**From:** Horton, Wendy

**Sent:** Wednesday, December 12, 2018 11:08 PM

**To:** Aqeilan, Rami I <[Rami.Aqeilan@osumc.edu](mailto:Rami.Aqeilan@osumc.edu)>; Ariza, Maria <[Maria.Ariza@osumc.edu](mailto:Maria.Ariza@osumc.edu)>; Burd, Christin <[Christin.Burd@osumc.edu](mailto:Christin.Burd@osumc.edu)>; Cao, Lei <[Lei.Cao@osumc.edu](mailto:Lei.Cao@osumc.edu)>; Coppola, Vincenzo <[Vincenzo.Coppola@osumc.edu](mailto:Vincenzo.Coppola@osumc.edu)>; Croce, Carlo M <[Carlo.Croce@osumc.edu](mailto:Carlo.Croce@osumc.edu)>; de la Chapelle, Albert <[Albert.delaChapelle@osumc.edu](mailto:Albert.delaChapelle@osumc.edu)>; Drusco, Alessandra <[Alessandra.Drusco@osumc.edu](mailto:Alessandra.Drusco@osumc.edu)>; Fishel, Richard <[rfishel@osu.edu](mailto:rfishel@osu.edu)>; Fisk, Harold <[fisk.13@osu.edu](mailto:fisk.13@osu.edu)>; Freitas, Michael <[Michael.Freitas@osumc.edu](mailto:Michael.Freitas@osumc.edu)>; Gasparini, Pierluigi <[Pierluigi.Gasparini@osumc.edu](mailto:Pierluigi.Gasparini@osumc.edu)>; Geng, Liying <[Living.Geng@osumc.edu](mailto:Living.Geng@osumc.edu)>; Huang, Wei <[Wei.Huang@osumc.edu](mailto:Wei.Huang@osumc.edu)>; Huebner, Kay <[Kay.Huebner@OSUMC.EDU](mailto:Kay.Huebner@OSUMC.EDU)>; Kirschner, Lawrence <[Lawrence.Kirschner@osumc.edu](mailto:Lawrence.Kirschner@osumc.edu)>; Kurita, Takeshi <[Takeshi.Kurita@osumc.edu](mailto:Takeshi.Kurita@osumc.edu)>; Marshall Williams <[williams.70@osu.edu](mailto:williams.70@osu.edu)>; Nakamura, Tatsuya <[Tatsuya.Nakamura@osumc.edu](mailto:Tatsuya.Nakamura@osumc.edu)>; Pekarsky, Yuri <[Yuri.Pekarsky@osumc.edu](mailto:Yuri.Pekarsky@osumc.edu)>; Sadee, Wolfgang <[Wolfgang.Sadee@osumc.edu](mailto:Wolfgang.Sadee@osumc.edu)>; Strohecker, Anne <[Anne.Strohecker@osumc.edu](mailto:Anne.Strohecker@osumc.edu)>; Toland, Amanda <[Amanda.Toland@osumc.edu](mailto:Amanda.Toland@osumc.edu)>; Tschlis, Philip <[Philip.Tschlis@osumc.edu](mailto:Philip.Tschlis@osumc.edu)>; Vecchione, Andrea <[Andrea.Vecchione@osumc.edu](mailto:Andrea.Vecchione@osumc.edu)>; Wang, Jing <[Jing.Wang@osumc.edu](mailto:Jing.Wang@osumc.edu)>; Weinstein, Michael <[weinstein.41@osu.edu](mailto:weinstein.41@osu.edu)>; Wharton, Robin <[wharton.88@osu.edu](mailto:wharton.88@osu.edu)>; Yoder, Kristine E <[Kristine.Yoder@osumc.edu](mailto:Kristine.Yoder@osumc.edu)>

**Subject:** CBG Chair Search Committee Recommendations

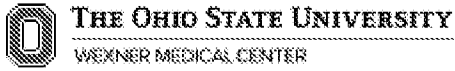
Dear CBG Faculty,

Thank you for your time today. Please feel free to send me names of individuals you would recommend to serve on the search committee. Your feedback and suggestions are valued and appreciated. We'll be looking for individuals both



within the department and across Ohio State. If you could forward your recommendations by Wednesday, December 19 that would be most appreciated. Please feel free to reach out with any questions.

Thank you,  
Wendy



Wendy Horton, PharmD, MBA, FACHE  
Chief Administrative Officer  
College of Medicine, Office of Health Sciences, Faculty Group Practice  
200D Meiling Hall  
370 W. 9th Avenue, Columbus, OH, 43210  
608.228.1892  
[wendy.horton@osumc.edu](mailto:wendy.horton@osumc.edu)