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January 19, 2012

Kevin Kirby, Ph.D.
Interim Dean, College of Informatics Northern Kentucky University
GH 500 Nunn Dr.
High Land Heights, KY 41099

Re: Associate Professor Brad Scharlott
Our File No.: 2537-1

Dear Dean Kirby:

My office represents former Alaska Governor Sarah Palin. This letter is to inform you of a disturbing “hobby” of one of your professors, Brad Scharlott, concerning Governor Palin and her family. It is also to inform you that he has used both his position as an associate professor at NKU and NKU letterhead to pursue this interest. The purpose of this letter is three-fold: to inform you and your institution of this disturbing behavior; to inquire whether NKU has any direct involvement; to seek reassurances that the activity will cease; and to demand an apology for the improper and potentially illegal intrusion into Governor Palin’s and her minor child’s medical privacy rights.

Mr. Schalott’s obsessive interest is known colloquially as “Trig Trutherism,” a belief in a conspiracy theory that Governor Palin faked the pregnancy, delivery, and birth of her fifth child, Trig Palin. As parents, the Palins find these allegations hurtful and malicious. Although Trig is too young (he soon will celebrate his fourth birthday) to yet know of these vicious untruths, he will soon reach the age where he will use the internet and likely learn of this theory. Will he also learn of NKU’s purported involvement by Mr. Scharlott’s misuse of letterhead and his title? This letter is intended to give NKU an opportunity to correct the implication that NKU is involved.

Enclosed at Tab A is a letter that we received from Associate Professor Brad Scharlott on Northern Kentucky University letterhead. He signs the letter in his capacity as a professor at NKU. Attached to the letter is an “article” that Professor Scharlott states he intends to publish. He later (rather generously) refers to the article as a “paper,” implying that it has passed some sort of professional peer review. Our review of the article indicates that it is not peer reviewed and seems to rely exclusively on rumor, innuendo and internet-fueled conspiracy fantasy. It appears that Professor Scharlott has joined the small

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fringe group of conspiracy theorists who believe that for various reasons (they tend to vary based on the authors' particular political or personal bias), Governor Palin faked the pregnancy, delivery, and birth of her fifth child, Trig Palin.

From the questions that Professor Scharlott asks in his NKU letter, it appears that he is also in a sub-camp of the "Trig Truther" conspiracy theorists who believe that Governor Palin not only faked the birth, but then publically presented multiple infants to the public as Trig Palin (and then somehow got rid of them). Without going into detail, this conspiracy sub-theory involves fantastic allegations of multiple babies, fake babies (live or dolls), hidden children and even infanticide. Most of these theories sound like bad movie plots but you can find them if you waste some time on the internet. Professor Scharlott's allegations appear to be based on his lay "analysis" of various photos he retrieved off the internet and then digitally enlarged.

Additionally, Professor Scharlott's NKU letter then questions the Palins about the Governor's then-minor daughter's confidential pregnancy and delivery history. This appears to be pursuing the long-discredited rumor that Trig's delivery was faked to somehow cover up a daughter's pregnancy. The question of course ignores the fact that the pregnancy and birth of the Governor's first grandchild was a widely reported media event. The NKU letter concludes with Professor Scharlott threatening the Palins that if they do not dignify the letter with a refutation he has somehow insulated himself (and presumably NKU) from a defamation suit. You may wish to consult with your own counsel about the durability and thickness of Professor Scharlott's purported insulation.

We have also recently learned that Professor Scharlott, again in his capacity as a professor at NKU and on NKU letterhead, has been contacting Mat-Su Regional Hospital (formerly known as Valley Hospital and the hospital where Governor Palin delivered her children, including Trig) directly. Attached as Tab B is a letter he sent to Sterling Grover, the Director of Marketing at Mat-Su Regional. This letter acknowledges the HIPAA patient privacy act, but then advises Mr. Grover that HIPAA may not apply "in the case of fraud." What is NKU's support for this exemption to HIPAA law? What is NKU's factual support for the allegation of fraud? I question whether your colleagues at the College of Health Professions share Professor Scharlott's interpretation of federal health-care privacy law.

This letter also purports to demand information "under Alaska and federal Freedom of Information statutes." I am both a health care attorney and am fairly well versed in public records law. Could you please direct me to the statutes that NKU is referencing that would support a demand for information related to an individual patient's health information as part of a FOIA request? This is particularly intriguing considering that Mat-Su Regional is directly and indirectly owned by a partnership and is *not* a public hospital.

Attached at Tab C is a November 14 letter from Mr. Scharlott addressed to John Lee, the CEO of Mat-Su Regional. This letter is not on NKU letterhead. In this letter, Mr. Scharlott again asks a series of questions. If there was any question as to whether these questions were part of legitimate inquiry or merely rhetorical Mr. Scharlott lays it to rest when he answers his fourth question "of course not." Mr.

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Scharlott again threatens Mat-Su with exposure for perpetuating a fraud or a hoax if they do not answer his questions.

Attached as Tab D is a November 14 letter from Mr. Scharlott addressed to Wayne Smith, the Board Chair, President and CEO of Community Health Systems, the hospital management company that manages Mat-Su Regional. Again while not on NKU letterhead, this letter now elevates the evidence of a hoax to a “near certainty” and threatens Mr. Smith to “come clean” or face the consequences of the “Penn State debacle.”

I have attached as Tab E a disturbing series of postings from Mr. Scharlott’s Twitter page. What is disturbing is the obsessive volume of these tweets (e.g. 124 on December 24 alone) as well as the clear political motive demonstrated in the titles. Examples of the political motive include “Palin 2008 birth hoax was aimed at manipulating right-to-life base, to help GOP win presidency,” “Palin birth hoax in 08 was political & should be exposed b/c GOP had to know about it, could aid Dems in 2012,” “Palin birth hoax in 2009 was political not personal & should be exposed b/c GOP had to know after 8/30.” Again, Mr. Scharlott has a right to his own political beliefs, no matter how patently insane they may be. However, when these beliefs motivate false statements, and unsupported allegations of fraud, they raise a specter of defamation based on actual malice. When those same statements appear on NKU letterhead, they implicate NKU in the malice.

Attached as Tab F is a series of blogger articles Mr. Scharlott has authored and posted on his blog “Scharlott’s Beacon.” Again these articles show the degree of Mr. Scharlott’s obsession with this subject.

Finally, attached as Tab G are three highly disturbing documents. The first is a public demand for Mat-Su Regional to issue a “press release” in violation of patient privacy. Northern Kentucky University is identified in the press release. Mr. Scharlott again repeats his (and, through use of letterhead, apparently NKU’s) position that patient privacy does not apply when someone alleges fraud.

The second document in Tab G is a \$10,000 “reward poster” that Mr. Scharlott posted to induce individuals to leak proof that Governor Palin gave birth in 2008. In this poster, Mr. Scharlott is asking for parties to leak “medical records, a birth certificate, or a signed notarized statements from the delivering obstetrician” (earlier versions requested statements “on hospital letterheads from medical personnel involved in the delivery”). Mr. Scharlott has apparently solicited donations to pay for this reward. Also attached is a “Truthometer” showing that Mr. Scharlott has apparently solicited \$22,380 in donations or pledges. The fact he is soliciting and collecting money or pledges for this enterprise is more than a little disturbing and raises an issue of whether the solicitation of such funds without registering with the Kentucky Attorney General’s office is legal under Kentucky law, see e.g. KRS §§367.650 – 367.670.

The last document in Tab G is a classified advertisement that Mr. Scharlott ran this week in the *Anchorage Daily News*. The advertisement has since been taken down for violation of the ADN policy against illegal advertisements. This advertisement states “Writing Sarah Palin book. Seeking answers re

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Trig's birth at Mat-Su hospital. Up to \$5,000 for notarized statement. 859-426-5309 brad.scharlott@gmail.com." It appears Mr. Scharlott bypassed the ADN classified ad screeners by entering the advertisement online. Again, Mr. Scharlott is offering money (apparently now only \$5000) to individuals who are willing to leak confidential medical information about Governor Palin and her son.

This advertisement raises many of the same issues outlined above. He is clearly offering money in Alaska to induce Alaska residents to violate medical confidentiality and vital statistics confidentiality laws. The ADN advertisement also raises an issue of what happened to the \$22,380 in donations? If there is only \$5000 left for the reward, it appears that Mr. Scharlott may have converted a significant portion of the money he claimed to have previously collected.

In addition to the potential criminal penalties for violation of the Commonwealth's fundraising statutes, Mr. Scharlott's actions may have numerous and varied potential civil legal consequences, both for himself and for NKU.

You are no doubt aware that medical records or any information contained in them is private and confidential. As part of the implementation of the Health Insurance Portability and Accountability Act of 1996, the U.S. Department of Health and Human Services issued the Privacy Rule, which addresses the use and disclosure of individuals' protected health information by organizations subject to the Privacy Rule. The Office for Civil Rights has responsibility for implementing and enforcing the Privacy Rule with respect to possible civil money penalties. Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity under the Act. The only way for any medical provider (or employee of such a provider) with access to records covered by the Act to divulge information to Mr. Scharlott is through a direct violation of this law. By offering money to induce an individual to violate medical privacy, Mr. Scharlott is soliciting a violation of federal law.

In addition, The Alaska State Constitution, Art. 1, § 22, states that "[t]he right of the people to privacy is recognized and shall not be infringed." Alaska state courts recognize a cause of action for invasion of privacy when a person intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his or her private affairs or concerns. A false light invasion of privacy claim arises when the defendant publicizes a matter that places the plaintiff before the public in a false light.

Mr. Scharlott's offer also would seem to encourage and solicit unauthorized individuals to illegally obtain vital statistics records and may therefore amount to solicitation of fraud in violation of Alaska statute AS 11.31.110. He has directed his actions at Alaska residents and made contact with Alaska. Because of his use of NKU letterhead, his actions have implicated NKU.

Finally, under the First Amendment of the U.S. Constitution and related law, a public figure *can* win damages for defamation where they can prove that the defendant published the defamatory statement at issue with actual malice. Given Mr. Scharlott's blog posts which show clear personal animus toward the Palin family and an overt political motive, the prima facie case for malice appears to be established.

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Mr. Scharlott's personal obsession with pursuing insane conspiracy theories, while disturbing, is his frankly his own business. What disturbs us is whether Northern Kentucky University is pursuing or at least legitimizing this inquiry? By using University letterhead and by signing his letters and press releases in his official capacity as an Associate Professor of the University, Mr. Scharlott is clearly pursuing his inquiry in his capacity as an employee and a representative of Northern Kentucky University. As noted above, at a minimum, he is improperly using his position as an associate professor to legitimize his inquiry without authority. This clearly begs the question of whether your institution is chasing down nonsensical conspiracy theories, inducing others to violate privacy laws, and harassing individuals across the country or is Mr. Scharlott doing this on his own and without your knowledge?

We would appreciate a prompt response to this letter, specifically to our questions about the interest that Northern Kentucky University has in this issue and whether it supports Mr. Scharlott collecting donations and then repeatedly offering to pay money for confidential medical and vital statistics information. We would like to know whether NKU is supporting the use of its letterhead in making the inquiries contained in these letters. We are presently giving the benefit of the doubt that the College of Informatics and NKU leadership had no knowledge of Mr. Scharlott's activities prior to this letter. However, we would like that assumption confirmed in writing. We further request written assurances that NKU has now abandoned this inquiry. We also ask for written confirmation that Mr. Scharlott will cease using NKU resources and letterhead and will cease his attempts to coerce individuals to disclose confidential medical records and vital statistics information. Finally, we ask for an apology to Governor Palin and her family for this attempted intrusion into their family medical records by one of your employees. We believe that two weeks should be sufficient time for you to investigate these allegations and answer these questions.

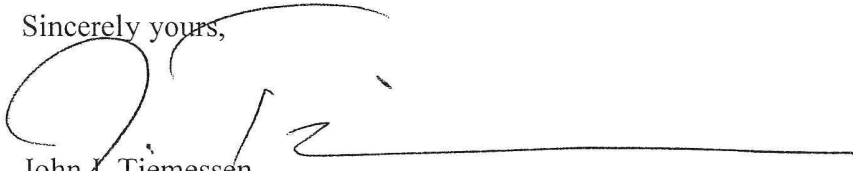
As you are likely aware, we have considerable access to the national press. We have, in the interest of the Palin family's personal privacy and as a demonstration of good faith, refrained from issuing a press release about Mr. Scharlott's disturbing actions, his use of NKU letterhead, or this inquiry. We would hope that NKU respects this action and does not compound Mr. Scharlott's errors and indiscretion by making this inquiry public. It is our sincere hope that this matter can be resolved quickly, professionally, confidentially, and definitively. I truly believe that the proper answers to the above questions and an apology could resolve this dispute at this point.

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Please do not hesitate to call if you have questions or concerns.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'John J. Tiemessen', with a long horizontal line extending to the right.

John J. Tiemessen

Direct Dial: 907-479-7707

Email: jjt@cplawak.com

Enclosures: As stated

Cc: Dr. James C. Votruba, President (with enclosures)
Nancy A. Barone, Chair, Board of Regents (with enclosures)
Sara L. Sidebottom, Vice President for Legal Affairs (with enclosures)

JJT/plb/2537-1/LtrKevinKirbyPhd