



FIRE

Foundation for Individual
Rights and Expression

April 19, 2023

Joshua B. Murphy
Chief Legal Officer
Mayo Clinic College of Medicine and Science
200 First Street SW
Rochester, Minnesota 55905

Sent via U.S. Mail and Electronic Mail (Murphy.Joshua@mayo.edu)

Dear Mr. Murphy:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Mayo Clinic College of Medicine and Science's punishment of Professor Michael Joyner for speaking to the media as a private citizen about public issues. As a college that promises its faculty free speech and academic freedom, MCCMS may not discipline Joyner for speaking to journalists in his private capacity.

On March 5, Anesthesiology & Perioperative Medicine Department Chair Carlos Mantilla suspended Joyner on the stated ground that he "failed to consistently work within Mayo Clinic guidelines related to media interactions and failed to communicate in accordance with prescribed messaging."² Mantilla said Joyner's comments about convalescent plasma treatments for COVID-19 and sports performance research made in his personal capacity to CNN, *The New York Times*, and other media outlets, "reflect[ed] poorly on Mayo Clinic's brand and reputation" and "caused the institution to question whether . . . [he is] able to appropriately represent Mayo Clinic in media interactions."³

As punishment, Mantilla required Joyner to "[v]et each individual media request through Public Affairs . . . [to] determine what topics are appropriate and are responsible for protecting Mayo Clinic's brand and reputation," to "[c]ease engagement in offline conversations with

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Letter from Carlos Mantilla, Anesthesiology & Perioperative Medicine Department Chair to Michael Joyner, professor (Mar. 5, 2023) (on file with author). This recitation reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ *Id.*

reporters,” and to “[d]iscuss approved topics only and stick to prescribed messaging.”⁴ Joyner’s appeal of this determination is pending.

MCCMS’s punishment of Joyner for his media commentary violates the academic freedom and free speech promises the college makes to its faculty. MCCMS’s Freedom of Expression and Academic Freedom Policy commits the college to uphold “academic freedom and freedom of expression for all learners and faculty . . . which includes the right to discuss and present scholarly opinions and conclusions without fear of retribution or retaliation” even “if those opinions and conclusions conflict with those of the faculty or institution.”⁵

Joyner’s media commentary falls squarely within MCCMS faculty’s free speech right to speak as private citizens on matters of public concern.⁶ Likewise, there is no indication Joyner purported to represent MCCMS when speaking to media.⁷ MCCMS’s sanctions rest on Joyner’s insistence on speaking in his individual capacity. In fact, his refusal to coordinate with the college’s Public Affairs team and conform his *personal* comments to MCCMS’s “prescribed messaging” show his intent to distinguish himself as separate from the college.⁸ Additionally, Joyner’s commentary to prominent media outlets regarding his scientific expertise undoubtedly concerns issues of substantial interest.⁹

Professor Joyner’s expression is clearly protected under any reasonable conception of free speech and academic freedom—values that MCCMS promises to uphold. We request a substantive response to this letter no later than the close of business on May 3, confirming that the college will rescind all discipline on Joyner and recommit to upholding faculty members’ expressive rights.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Encl.

⁴ *Id.*

⁵ *Freedom of Expression and Academic Freedom Policy*, MAYO CLINIC COLL. OF MEDICINE AND SCIENCE (Sept. 29, 2020) (on file with author).

⁶ *Lane v. Franks*, 573 U.S. 228, 240 (2014); *Connick v. Myers*, 461 U.S. 138, 150 (1983). While MCCMS is not bound by the First Amendment, courts’ interpretation of the First Amendment should inform MCCMS’s commitment to free speech and the faculty’s reasonable interpretation of their expressive rights.

⁷ *See Lane*, 573 U.S. at 240 (the “critical question” in whether an employee speaks in their personal capacity is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.”).

⁸ MCCMS’s punishment reflects that colleges do not ordinarily employ their faculty to speak to media outlets. Even assuming journalists knew of Joyner’s title, the mere knowledge of a speaker’s employment does not render their speech pursuant to their official duties. *See, e.g., Pickering v. Bd. of Educ.*, 391 U.S. 563, 575-76 (1968) (appendix reproducing teacher’s letter to a local newspaper criticizing his employer, explaining that he teaches at the high school).

⁹ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (public issues include speech “relating to any matter of political, social, or other concern to the community”).

Authorization and Waiver for Release of Personal Information

I, Michael Joyner, do hereby authorize Mayo Clinic (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

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Signature

4/18/2023

Date