

Daniel J. Cragg  
dcragg@ecklandblando.com  
612-236-0160

June 25, 2021

**VIA HAND DELIVERY**

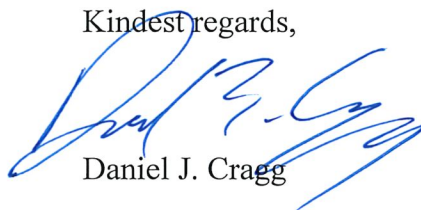
U.S. Equal Employment Opportunity Commission  
330 South Second Avenue, Suite 720  
Minneapolis, MN 55401

Re: *U.S. Equal Employment Opportunity Charge of Discrimination*

Dear Sir or Madam,

The undersigned and Eckland & Blando LLP represent Dr. Tara Gustilo, whose Charge of Discrimination is enclosed herewith for filing. Please direct any communication and follow up relating to this Charge to my attention.

Kindest regards,



Daniel J. Cragg

Enclosure:

- Dr. Tara Gustilo's EEOC Charge

**VIA HAND DELIVERY**

U.S. Equal Employment Opportunity Commission  
330 South Second Avenue, Suite 720  
Minneapolis, MN 55401  
612-552-7306

***Re: U.S. Equal Employment Opportunity Commission Charge of Discrimination***

My name is Dr. Tara Gustilo. I am currently employed as a physician at Hennepin Healthcare System (“HHS”). HHS is a large medical institution with several departments and approximately 6000 employees. Within my department, there are currently about 32 employees. Before coming to work at HHS, I attended Harvard-Radcliffe College and received a Bachelor’s degree in Arts. I then continued on to receive my Doctorate degree in Medicine at the Mayo Medical School. After my residency at Duke University Medical Center, I spent several years working in a Clinic in Ohio and on the Native American reservation in Chinle, Arizona. I began working at HHS in January of 2008 and quickly became heavily involved in the community through several leadership roles. After just two years at HHS, I was named clinic medical director for my practice group. Through this role, I made several improvements to the clinic, including changing templates so the clinic could see more people, setting higher expectations for continuity of care, and working on several initiatives to generally connect the diverse patient population of HHS to better medical care. During this time, I served as an elected member of the HCMC Physician Leadership Development Committee as well as a member of the HCMC Medial Executive Committee. I also served as a member on the Hennepin Healthcare System Board of Directors.

I then assumed the role of interim Chair of the Department of Obstetrics and Gynecology Department in May of 2015. In this role as Interim chair, I maintained my gynecology practice but no longer saw obstetrics patients so I could focus on improving several different areas within clinical care. After four years serving as Interim Chair, I was officially made Chair of the OGBYN Department. My department continued to have one of the highest patient satisfaction rates and had one of the lowest decreases in visits during the Covid pandemic of all Departments within HHS.

**Background of Personal Beliefs on Race**

Shortly after the death of George Floyd, I began doing my own personal research relating to police brutality. Having three children considered black by society, I was concerned for their safety and sought to be informed. As a person of color myself, I also was sought to better understand the race dynamic in America. However, through my research, I discovered widespread misinformation and misconceptions relating to race in America. Through the summer of 2020, I began posting my findings to my personal Facebook page. These beliefs included my personal opinions on the Black Lives Matter movement and Critical Race Theory.

Through my research, I learned that Critical Race Theory (“CRT”) is a race essentialist ideology that presupposes zero sum racial conflict and seeks to remedy that by discriminating against individuals, so as to make group outcomes more equal. CRT rejects meritocracy and

colorblindness and instead recognizes that invisible systems of power – “systemic racism” – bear the primary responsibility for racial inequality. Peggy McIntosh, *White People Facing Race: Uncovering Myths that keep Racism in Place* (2009). CRT deems any person in a minoritized racial group as a victim of a rigged system and those born into “privileged races” are automatically and inherently exploiters of minorities. Robin DiAngelo, *White Fragility* (2018). Critical Race theorists explicitly reject the principle of equality under the law, arguing that legal equality, nondiscrimination, and colorblindness are mere camouflages used to uphold white supremacist structures. Delgado & Stefania, *Critical Race Theory: An Introduction* (1995). Importantly, encompassed in this notion, is the idea that the First Amendment serves to advance the interests of white supremacy, thus the government should restrict freedom of speech that is deemed “racist” or “hateful.” Ibram Kendi, *Inequality: Pass an Anti-Racist Constitutional Amendment*, POLITICO (2019). Finally, CRT also warns people of color against “internalized whiteness” which theorizes that people of a nondominant group believe the “myths” and “misinformation” about people of color because “whiteness” is deemed superior. National Museum of African American History & Culture, *Talking about Race: Whiteness* (accessed June 18, 2021) <https://nmaahc.si.edu/learn/talking-about-race/topics/whiteness>.

After researching CRT and taking into account my own experiences of being a person of color in America, I came to believe that CRT is not a continuation of the civil rights movement but rather a repudiation of it. Importantly, I reject CRT because it itself rejects the traditional view of equality—the bedrock of our nation—as prescribed in our founding documents and the laws that protect us based on this foundation, including Title VII. Finally, I reject CRT because it imparts that I as a person of color am oppressed and will always be oppressed because of my race and the structures and systems within the United States.

### **Background of Employment at HHS**

Despite the negative effects and implications of CRT, and contrary to Title VII, HHS created and fostered a culture of discrimination and retaliation by imposing its own views on race, consistent with those contained in CRT. Below are several instances where I expressed my beliefs and advocated for equality under the definition and practice of Title VII, to which HHS ultimately retaliated against me by demoting me from Chair of the Department.

First, and most notably, I vocalized my disagreement when a program I created began to morph into racially segregated care. Initially, I sought to create a program within HHS’s OBGYN department to better understand the varying traditions and cultures of the diverse community HHS serves in order to personalize and improve each patient’s experience during birth. However, I noticed that members of the department instead began to transform the program from one that simply sought to respect and appreciate the various cultures to one of segregated care based on race. I expressed my concerns and voiced my disagreement with this transformation.

In another instance, I vocalized my disagreement with the department’s public support of a Black Lives Matter event because this support ran contrary to HHS’s policy against affiliating with political groups. One of the primary reasons I oppose the Black Lives Matter movement is because it is a proponent of CRT. Importantly, because Black Lives Matter is a political group in nature, I felt it was inappropriate for our department to contradict HHS policy and publicly affiliate

with the group during a rally. This was subsequently addressed in an HR meeting; when I described what occurred, I learned that even HR had been unaware that Black Lives Matter publicly acknowledged HHS as an affiliate.

Finally, I was approached by members of HR and the medical executive team concerning my personal Facebook posts opposing CRT. During these discussions, they stated these personal posts impacted my “ability to lead.”

### **HHS’s Discriminatory Actions in Violation of Title VII**

Title VII is a provision of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, religion, gender, pregnancy, or national origin. To make a race-based discrimination claim under Title VII, an employee must show 1) the employee is a member of a protected class, 2) the employee is qualified for the position, 3) the employee suffered an adverse employment action, 4) and such action occurred under circumstances giving rise to an inference of discrimination.

Each of the above instances were discussed at length throughout several meetings with HR and Dr. Daniel Hoody. Through these discussions, I was told that members of my department questioned by ability to lead based on such instances, and specifically, my views on race in conformance with Title VII. In fact, during one HR meeting, I was told that my beliefs were the “trigger” for my demotion. It became clear that HHS was discriminating against me, as a person of color, for my refusal to subscribe to CRT and my supposed “internalized whiteness” for possessing such beliefs. HHS stated that I could not adequately lead my department, and that this inability to lead was due to my refusal to subscribe to the beliefs encompassed in CRT.

All four elements of a race discrimination claim under Title VII are present here. First, because I am of Filipino descent, I am a protected class under Title VII.

Second, I successfully improved and ran the OBGYN department for several years without any formal concern or complaint brought to my attention regarding my leadership capabilities. In fact, our department was one of the highest performing at HHS. Not only were we extremely cost-efficient under my leadership, but we also garnered one of the highest patient satisfaction rates and lowest drop in patient visits during the pandemic. Individually, I have one of the highest patient satisfactions scores among all the physicians at HHS. Thus, I am more than qualified for my role as Chief of the OBGYN Department.

Third, the events and treatment described above occurred throughout the summer of 2020 and came to a culmination in the fall of 2020 when I was informed by Dr. Hoody I would either need to step down as Chair of the Department voluntarily or be removed involuntarily, after informally threatening me to demote me several times. I refused to step down and requested the basis for my removal. On April 29, 2021, I was formally removed as Chair of the Department.

Finally, the circumstances surrounding my demotion infer not a lack of qualification or ability to lead, but rather discrimination for my advocacy of a traditional, race-neutral approach. Through the above-mentioned instances, I advocated for Title VII compliance. Through this

advocacy, I was also in compliance with the goals and policies underlying Title VII. However, my colleagues instead successfully advocated for race essentialism, specifically, for segregated care and policies that reverse the decades of progress made in fighting for equality. They also assumed that I as a minority should possess this same view on race, and that without this view, I was incapable of leading or managing a department. When I refused to subscribe to such view, I was threatened and ultimately demoted, despite no prior concerns voiced for my ability to lead the department.

I was informed that my removal was due to the concerns regarding “my inability to lead,” because of my beliefs on race. HHS also cited other concerns in justifying my removal, but such concerns were vague, minor, or had never been brought to my attention before I began posting my beliefs and voicing my disagreement with the Black Lives Matter movement and critical race theory, thus they were simply pretextual.

I was first told I was being demoted because I had been occasionally late to meetings. However, this had never been brought to my attention as a specific concern relating to my ability to lead or even conduct that may lead to an eventual demotion. I was also told I was being demoted because of my communication style, specifically, because I once allegedly made a nurse cry. However, there was no concern voiced for this alleged incident when it occurred. Contrary to this event, my correspondence with members of the department instead reflects my ability to work through various issues in a respectful and collaborative manner. Next, I was told I was being demoted due to my lack of presence both generally and within Obstetrics. However, the pandemic has greatly impacted our department’s ability to see each other face to face and on a regular basis. Moreover, I stopped practicing Obstetrics once I assumed the role of interim Chair over six years ago so I could focus on several initiatives to improve the department. I was made formal chair four years later without any noted concern regarding my lack of direct presence in Obstetrics. My email correspondence with the Director of Obstetrics instead demonstrates a positive working relationship where I would check in whenever my assistance or attention was necessary. Again, no concern regarding this practice was brought to my attention until the summer of 2020 and this system otherwise seemed to work well. These cited concerns satisfy the fourth and final element needed to bring a Title VII claim because they simply serve as pretext for HHS’s discriminatory actions. The reasoning provided was never brought to my attention before HHS became aware of my views on equality and race, nor does such reasoning warrant a demotion of this kind.

For these reasons, HHS discriminated against me by demoting me not based on my inability to lead the department or do my job, but solely based on my refusal to subscribe to CRT and the beliefs I am expected to hold a person of color.

### **HHS’s Retaliatory Actions in Violation of Title VII**

Under Title VII, a manager may not fire, demote, harass, or otherwise “retaliate” against an individual for opposing discrimination. However, HHS violated Title VII by retaliating against me after I voiced my dissent to the discriminatory actions I faced by refusing to subscribe to CRT.

On April 29, 2021, I was formally removed as Chair of the OBGYN Department and demoted by HHS. As described in detail above, the reasoning provided by HHS in justifying my

demotion demonstrates its failure to identify or articulate any legitimate basis for my removal as Chair, as the instances cited are either vague or so minor, they do not justify removal. Importantly, the concerns noted were never even brought to my attention before the summer of 2020, when I began posting my beliefs to Facebook and began advocating for equality in the traditional sense under Title VII. For these reasons, I was retaliated against by HHS for my vocalized disagreement with CRT and for the treatment I received for such disagreement.

### **Formal Charge against EEOC**

As described above, I vocally but respectfully have disagreed with my colleagues on several issues pertaining to Critical Race Theory and the Black Lives Matter movement. In conformance with federal law, I believe in equality for all and now more than ever find it extremely crucial to use my skills as a doctor and healer to serve and meet the needs of our diverse populations of HHS. As a person of color, I also believe that we cannot return to an era of segregation and racism. However, HHS has engaged in discriminatory and retaliatory behavior by demoting me on the basis of race due to my refusal, as a person of color, to subscribe to Critical Race Theory and the views of the Black Lives Matter movement and even admitting that such refusal served as the “trigger” for my demotion.

Because I was discriminated against and demoted on the basis of race,<sup>1</sup> I am formally bringing a charge with the EEOC against HHS and request the EEOC take remedial action. HHS’s contact information is: Hennepin County Medical Center, 730 S 8th Street, Minneapolis, Minnesota 55415, 612-873-3[REDACTED] I look forward to your response and welcome any questions.



Dr. Tara Gustilo, MD, MPH, DABMA



---

<sup>1</sup> In addition to race, HHS has also discriminated and retaliated against me on other grounds that form the basis of claims I intend to bring, which fall outside the jurisdiction of the EEOC and are thus not described in depth for purposes of this EEOC Charge.