

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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NORMAN C. WANG,	:	
	:	
Plaintiff,	:	No. _____
	:	
-against-	:	COMPLAINT
	:	
UNIVERSITY OF PITTSBURGH – OF THE	:	
COMMONWEALTH SYSTEM OF HIGHER	:	
EDUCATION; UPMC; and UNIVERSITY	:	
OF PITTSBURGH PHYSICIANS,	:	
	:	
Defendants.	:	
	:	

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This is an action for unlawful retaliation in violation of federal and state employment discrimination laws, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 955(d).

JURISDICTION AND VENUE

1. This action arises under the laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1367, and 42 U.S.C. § 2000e-5(f)(3).
2. Jurisdiction over the state law claim is invoked pursuant to the doctrine of supplemental jurisdiction because the state law claim forms part of the same case or controversy as the federal claim.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3) because, *inter alia*, (1) Defendants reside in this district, (2) Plaintiff resides in this district and felt the effects of Defendants' actions here, and (3) many of the acts complained of took place in this district.

PARTIES

4. Plaintiff Norman C. Wang is a cardiologist, a member of the faculty of the University of Pittsburgh School of Medicine ("UPSOM"), and a doctor employed by University of Pittsburgh Physicians ("UPP"). Prior to the events identified herein, he directed the fellowship program in clinical cardiac electrophysiology at the University of Pittsburgh Medical Center. Wang is an American citizen by birth who is ethnically Chinese.

5. Defendant University of Pittsburgh – of the Commonwealth System of Higher Education ("Pitt") is an educational institution in, and supported by, the Commonwealth of Pennsylvania. UPSOM is part of Pitt.

6. Defendant UPMC is a Pennsylvania corporation doing business in Pennsylvania under the name University of Pittsburgh Medical Center. It operates hospitals and medical centers in Pennsylvania, including teaching hospitals, and is affiliated with Pitt. Indeed, linked together by numerous formal affiliation agreements, UPMC (through its teaching hospitals) and UPSOM function as a single integrated academic health center. As part of its operations, UPMC employs residents and operates fellowship programs for physicians who have completed their residencies. The fellowship program for which Plaintiff was the director was one such fellowship program. The fellowship programs are part of a Graduate Medical Education

(“GME”) program at UPMC and UPSOM. The GME program, including the cardiology fellowships, is jointly operated by UPMC and UPSOM in affiliation with each other.

7. Defendant UPP is a group medical practice that employs UPSOM faculty physicians and is affiliated with, and wholly-owned by, UPMC. It supplies physician services to UPMC facilities, and its employees also serve as faculty at Pitt.

FACTUAL BACKGROUND

8. Like almost all faculty at UPSOM, Plaintiff has two interrelated, overlapping employment agreements, one with Pitt and one with UPP. Plaintiff receives W-2s from both Pitt and UPP. Plaintiff’s employment contract with UPP requires him to provide both academic services to UPSOM and clinical services to UPMC. In his UPP contract, UPP delegates supervision of all of Plaintiff’s activities required by the contract – both his academic activities and his clinical activities – to a department head at UPSOM.

9. Similarly, UPMC delegates much of the supervision of the physicians who work in its facilities to UPP.

10. In 2019 and 2020, Plaintiff – himself a member of a racial minority group – wrote an article on diversity in the cardiology workforce, tracing the history of the use of race and ethnicity as factors in determining admission into medical schools, residency programs, and fellowships. The article asserted that the medical profession had not been successful in reaching its goals of increasing the percentages of underrepresented races and ethnicities in the medical profession generally, and cardiology in particular. It also noted that programs to

achieve those goals applied different standards to applications by members of underrepresented races and ethnicities and raised questions about the legality, effectiveness, and wisdom of doing so. Finally, the article opined that the cardiology field was violating the laws against discrimination in the way it used race as a factor in hiring, recruitment, promotion, and admissions.

11. After a peer-review process, Plaintiff's article was published in the Journal of the American Heart Association ("JAHA"), first online, on March 24, 2020, and later in a print edition, on April 7, 2020. A true and correct copy of the article – *Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019* – is attached hereto as Exhibit A and is incorporated herein by reference.

12. Plaintiff's article concludes with the following passage:

As Fitzgerald envisioned, "We will have succeeded when we no longer think we require black doctors for black patients, chicano doctors for chicano patients, or gay doctors for gay patients, but rather good doctors for all patients." Evolution to strategies that are neutral to race and ethnicity is essential. Ultimately, all who aspire to a profession in medicine and cardiology must be assessed as individuals on the basis of their personal merits, not their racial and ethnic identities.

(Endnotes omitted.)

13. Some four months later, in late July 2020, certain faculty physicians and executives employed by Defendants Pitt, UPP, and UPMC learned about the existence of Plaintiff's article, and objected to his conclusions – which were potentially problematic or embarrassing for UPSOM and UPMC, since these institutions were publicly committed to a

policy of race discrimination in favor of “underrepresented in medicine” candidates.

Defendants Pitt, UPP, and UPMC resolved and agreed to impose adverse consequences upon Plaintiff with respect to his employment at Pitt and UPP as a result of the content and ideas in his article.

14. On July 31, 2020, Samir Saba, the chief of the division of cardiology at UPSOM and the co-director of the Heart and Vascular Institute at UPMC, and Kathryn Berlacher, the associate chief of education in the division of cardiology at UPSOM and the program director for the cardiology fellowship program at the Heart and Vascular Institute, met with Plaintiff. During the course of the conversation, Plaintiff told Saba and Berlacher that the selection processes for the medical education program at UPSOM and the graduate medical education programs at UPMC (jointly run with Pitt) were violating federal law because of the racial and ethnic preferences they employed.

15. Shortly after Plaintiff told Saba of the illegal nature of the programs at UPSOM and UPMC, Saba, with the agreement and approval of others at the highest levels of management of Defendants Pitt, UPP, and UPMC (including but not limited to the Dean of UPSOM, Anantha Shekhar), removed Plaintiff from his role as the director of the fellowship program in clinical cardiac electrophysiology.

16. In doing so, Defendants discriminated and retaliated against Plaintiff because he expressed the view that the cardiology field in general, and UPMC and UPSOM in particular, were violating federal law by discriminating on the basis of race and ethnicity in their hiring, recruitment, promotion, and admission practices.

17. As an additional retaliatory measure, Saba and Berlacher, acting on behalf of Defendants, changed the terms of Plaintiff's employment and forbade Plaintiff from having any contact with any individuals in any fellowship programs at UPMC, residents, or medical students at UPSOM.

18. At the same time that these adverse employment actions were being taken against Plaintiff, a number of employees and agents of Pitt, UPP, and UPMC (including but not limited to Dean Anantha Shekhar of UPSOM), acting on behalf of Pitt, UPP, and UPMC, began a public attack campaign against Plaintiff's article. Among other things, notwithstanding the fact that the article had survived an arm's length peer review process, these agents of Pitt, UPP, and UPMC falsely asserted that the article contained "blatant scientific falsehoods" and "misquotes." They made these statements to JAHA and called for it to retract the article.

19. An overlapping group of employees and agents of Pitt, UPP, and UPP, acting on behalf of Pitt, UPP, and UPMC, organized a campaign to denigrate Plaintiff and his article on Twitter, using Pitt's official @PittCardiology Twitter account. The following initial postings appeared on Twitter on August 2, 2020:

Tweet

Pitt Cardiology
@PittCardiology

@PittCardiology stands for diversity equity and inclusion across the board. This article uses misquotes, false interpretations and racist thinking to defend a single person's conclusion. We are outraged that @JAHA_AHA published this shameful and infuriating piece.

katie berlacher @KBerlacher · Aug 2, 2020

@PittCardiology I'm looking at you. What do we stand for? What do you think of this OPINION piece that misinterprets data and misquotes people? @JAHA_AHA this is scientifically invalid and racist.

7:22 PM · Aug 2, 2020

Many similar postings followed.

20. Despite the fact that it had vetted the article pursuant to the usual procedures for review of all articles, within days, on August 7, 2020, JAHA retracted the article in response to Defendants' attack campaign, without affording Plaintiff any opportunity to respond.

21. At no point was Plaintiff accorded the procedural protections traditionally accorded to a Pitt faculty member. *See, e.g.*, Pitt Policies and Procedures, RI 07 Research Integrity Policy (formerly 11-01-01), <https://www.policy.pitt.edu/research-integrity>.

22. Defendants attempted to compound their retaliation by ostracizing and isolating Plaintiff within his work environment, in the hopes that he would resign.

23. Months later, on October 27, 2020, Dean Anantha Shekhar of UPSOM withdrew the restriction on Plaintiff's contact with medical students, but left the other restrictions in place.

24. The adverse employment actions taken by defendants have had a negative financial and professional impact on Plaintiff. Plaintiff was to be paid sums in addition to his

base salary to be the director of the fellowship program in clinical cardiac electrophysiology. Because he was removed from that position, he is not being paid those additional sums and his professional reputation has suffered because he was publicly removed without just cause from a prominent professional role.

25. Plaintiff was also paid sums in addition to his base salary as a “Value Performance Incentive” based on the number of wRVUs (work relative value units) he earned in excess of an annual target, with the number of wRVUs calculated based on the number of patient consultations and clinical procedures performed. Because the groups with which he consults frequently included medical students, residents, or fellows, and because he is (or was in the case of students) prohibited from contact with those individuals, he can no longer consult as frequently as he did previously and has less income as a consequence. Indeed, after the contact restrictions were imposed, it was no longer possible for Plaintiff to see any patients at UPMC’s flagship hospital, UPMC Presbyterian.

26. Plaintiff has lost paid outside speaking opportunities because of the loss of his position as director of the fellowship program in clinical cardiac electrophysiology.

27. Plaintiff has suffered damage to his reputation, and emotional distress.

28. Plaintiff remains unable to contact any residents or fellows, a critical part of his professional duties prior to Defendants’ illegal, retaliatory acts. His removal from the position of director of the fellowship program in clinical cardiac electrophysiology remains in effect. In the absence of injunctive relief from this Court, these adverse actions against him will continue.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. On January 12, 2021, Plaintiff filed an administrative complaint against Pitt, UPP, and UPMC with the Pennsylvania Human Relations Commission (“PHRC”) and the Equal Employment Opportunity Commission (“EEOC”). (The two agencies have a work-sharing agreement; a filing with one agency is a filing with the other.) A true and correct copy of the administrative complaint is attached hereto as Exhibit B. On March 17, 2023, Plaintiff received notice of his right to sue from the United States Department of Justice (“DOJ”). A true and correct copy of the DOJ’s right-to-sue letter is attached hereto as Exhibit C. Plaintiff has fulfilled the necessary administrative prerequisites to bring this action. Suit is timely under 42 U.S.C. §§ 2000e-5(e)(1), 2000e-5(f)(1), and 43 Pa. Cons. Stat. § 962(c).

CLAIM FOR RELIEF

All Defendants

Retaliation in Violation of Title VII, 42 U.S.C. § 2000e-3(a), and the Pennsylvania Human Relations Statute, 43 Pa. Cons. Stat. § 955(d)

30. Plaintiff hereby incorporates all of the previous allegations of this complaint.

31. Defendants retaliated against Plaintiff, and imposed the foregoing adverse employment actions against him, for his expression of views that the cardiology field in general, and UPSOM and UPMC in particular, were engaging in illegal discrimination on the basis of race and national origin.

32. Plaintiff had a reasonable belief that UPSOM and UPMC and other employers in the field of academic cardiology (specifically, medical schools and academic health centers)

were discriminating on the basis of race and ethnicity in violation of federal and Pennsylvania law.

33. Defendants accordingly violated Title VII, 42 U.S.C. § 2000e-3(a), and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 955(d).

34. Plaintiff has lost pay and will continue to lose pay as a consequence of the adverse actions taken by Defendants. Accordingly, he is entitled to both backpay for past harm and frontpay or injunctive and/or declaratory relief to prevent ongoing and future harm.

35. Plaintiff has suffered other damages as a consequence of the adverse actions taken by Defendants, and is entitled to compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. A declaratory judgment that defendants are violating Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act by their removal of plaintiff from his position as the director of the fellowship program in clinical cardiac electrophysiology, by restricting his contacts and teaching responsibilities, and by otherwise retaliating against him.

B. Injunctive relief requiring Plaintiff's reinstatement as director of the fellowship program in clinical cardiac electrophysiology and precluding Defendants from enforcing their prohibition against Plaintiff having any contact with medical students, residents, or fellows;

C. Backpay, frontpay, and damages in an amount to be determined;

D. Attorney's fees and costs pursuant to 28 U.S.C. § 1920, 42 U.S.C. § 2000e-5(k), 43 Pa. Cons. Stat. § 962, or any other applicable authority; and

E. Any other relief that is appropriate.

JURY DEMAND

Plaintiff hereby demands a jury for all claims triable by right by a jury.

Dated: April 4, 2023

/s/ Shawn Rogers

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