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January 23, 2024

VIA EMAIL

Elizabeth Davey, Investigator

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Tania Taveras, Administrative Assistant

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Massachusetts Commission Against Discrimination

1 Ashburton Place

Boston, MA 02108

Re: Carmen Benjamin v. Boston Children's Hospital
MCAD No. 23-BEM-02712
EEOC No. 523-2023-02250

Dear Ms. Davey and Ms. Taveras:

I hope this letter finds you well. In connection with the above-entitled matter, enclosed please find the following pleading:

- Position Statement of Respondent, Boston Children's Hospital

Please feel free to contact me should you have any questions regarding the enclosed or require anything further on this matter. Thank you.

Sincerely,

Benjamin O. Hoerner

Benjamin O. Hoerner
Associate General Counsel

BOH/hao
Enclosures

cc: Ms. Carmen Benjamin, via first-class mail w/ encl.

COMMONWEALTH OF MASSACHUSETTS

CARMEN BENJAMIN,)	
))	
COMPLAINANT)	MCAD NO. 23-BEM-02712
V.)	EEOC NO. 523-2023-02250
BOSTON CHILDREN'S HOSPITAL,)	
))	
RESPONDENT)	
))	

POSITION STATEMENT OF RESPONDENT **BOSTON CHILDREN'S HOSPITAL**

I. INTRODUCTION

Boston Children's Hospital (the "Hospital", "BCH" or "Respondent") is a charitable corporation primarily engaged as an academic medical center focused on medical research and the medical care of children. BCH is a full service medical center open 24 hours a day, every day. The Emergency Psychiatric Service at Boston Children's Hospital ("EPS") provides critical mental health services to children and their families who visit Boston Children's Emergency Department in crisis. The Emergency Psychiatric Service is where Ms. Benjamin's ("Ms. Benjamin" or "Complainant") allegations arise. *See* Charge of Discrimination, attached hereto as **Exhibit A** ("Charge"). Ms. Benjamin's claims of race-based discrimination are without merit. As set forth in more detail below:

- Ms. Benjamin admits she voluntarily resigned from EPS and, therefore, she did not experience an adverse employment action.
- Ms. Benjamin's primary complaint in the Charge is about the burdensome nature of her position in supporting a new coworker at the peak of the mental health crisis in the Commonwealth and during the COVID-19 pandemic. These challenges were not unique to Ms. Benjamin, and they were in no way related to Ms. Benjamin's race (nor does she allege they were related to her race). Neither the reality of Ms. Benjamin's situation nor the allegations in the Charge support a race-based discrimination claim.
- Boston Children's Hospital offered Ms. Benjamin a number of different schedules and positions in an attempt to retain her. Ms. Benjamin admits she rejected these offers. Ms. Benjamin's claims of discrimination are especially nonsensical, given that BCH clearly tried to dissuade Ms. Benjamin from leaving, but failed because the Hospital was unable to satisfy her unique scheduling demands.

The Charge is legally and factually deficient, and it should be dismissed.

II. BACKGROUND

A. The Emergency Psychiatric Service at Boston Children's Hospital.

Boston Children's Hospital's Emergency Psychiatric Service provides mental health services to children, adolescents, and their families who visit the Emergency Department in crisis. EPS's goals are to stabilize the patient, guarantee their safety, and recommend follow-up care. These services include emergency psychiatric assessments, crisis interventions, acute stabilizations, and safety planning.

There are approximately 50 social workers within EPS, all of whom formally report to Pamela Chamorro, MSW, LICSW (Director of Social Work; Hispanic). The work of the Social Workers in EPS is currently supervised by Jennifer Cummings, MSW, LICSW (Assistant Director of Social Work; White) and Asha Mathur Kiirkki, LICSW (Manager and Clinical Social Worker; Asian).

A Boston Children's Hospital Clinical Social Worker is expected to work with each family to address medical, social, physical, and emotional factors impacting their child's health and quality of life. *See MSW I, Social Worker Job Description, attached hereto as **Exhibit B**.* Clinical Social Workers are expected to assist families in gaining access to services within and outside the BCH system. They also assist families in navigating and adjusting to medical diagnoses and treatment regimens. Clinical Social Workers help families with trauma, child protection, domestic violence, and parenting and caregiver concerns. All Social Workers, but especially those in the Emergency Department, must be flexible and able to work in a fast-paced and dynamic environment.

B. Ms. Benjamin's Employment within the Emergency Psychiatric Service.

Ms. Carmen Benjamin was hired as a part-time Clinical Social Worker, MSW I in EPS on November 30, 2020. *See Complainant's Offer Letter, attached hereto **Exhibit C**.* As part of the standard hiring process, Ms. Benjamin was interviewed by Ms. Chamorro, Ms. Cummings, and Mr. David Weintraub MSW, LICSW (White) – the EPS Social Work Manager at the time of hire. At the start of Ms. Benjamin's employment, she formally reported to Ms. Chamorro, however, her work was supervised by Ms. Cummings and Mr. Weintraub.

Ms. Benjamin's part-time role with EPS was critically important, providing necessary psychosocial assessments to some of the most challenging patients at Boston Children's Hospital. Specifically, Ms. Benjamin's November 2020 hire date coincided with dual threat of the COVID-19 pandemic as well as the mental health crisis in the Commonwealth, which persisted over the course of the next two years. EPS leadership was so acutely aware of these challenges that they included a bolded disclaimer in the offer letter of Ms. Benjamin and other new social workers: "**Please note that in the event of a public health emergency you may be asked to assume additional duties in other areas of the organization.**" **Exhibit C.**

Ms. Benjamin worked the weekend day shift – a rotating shift of every other Saturday and Sunday from 8 AM – 4:30 PM. Throughout Ms. Benjamin's employment, this weekend shift was supported by approximately three social workers. However, at times, EPS increased the staffing on this weekend shift to four social workers to try to address the developing strain on the mental health system. EPS attempted to supplement its weekend staffing by hiring per diem social workers

and engaging BCH social workers who were regularly assigned to work in other areas in the Hospital.

C. Ms. Benjamin's Concerns while at Boston Children's Hospital.

Given the critical need of providing psychosocial services to patients in EPS on the weekend day shift, BCH hired a new clinical social worker in October 2021 (the “New Colleague”). Ms. Benjamin’s New Colleague did not have prior clinical experience and, therefore, needed additional support as she was brought up to speed on the work of EPS. The New Colleague required some time to adjust initially, and the EPS leadership provided her with extra support as she continued to increase her comfort in the role.

During this period, Ms. Benjamin approached David Weintraub, the Social Work Manager at the time, about the New Colleague. Ms. Benjamin’s complaints were around needing to support a coworker who appeared anxious and had a lot of questions in a clinical area that was fast moving and in high demand. Mr. Weintraub appreciated Ms. Benjamin’s concerns, as he had taken steps to try to increase the New Colleague’s comfort, including by meeting with her regularly to provide feedback and answer questions. In October 2021, Mr. Weintraub helped implement a supervisor on call program so that all EPS Social Workers could contact their supervisor if they had a question or needed other assistance. Both Ms. Benjamin and the New Colleague took advantage of this option on several occasions.

After Ms. Benjamin asserted that she was having challenges with the New Colleague, and was interested in transitioning to a different opportunity at BCH, Social Work leadership assessed alternative options in the event that Ms. Benjamin wanted to change roles. Eventually, Ms. Cummings formally offered Ms. Benjamin a 40 hour Clinical Social Worker role in Oncology, with an annual salary of \$72,895.51. Ms. Benjamin responded on November 3, 2022: “Thank you for providing this information. Although the position is an ideal match for my skill set, interests and career goals, I respectfully decline the offer.” *See Position Offer Email Correspondence*, attached hereto as **Exhibit D**. Accordingly, Ms. Benjamin continued to work in her part-time weekend day shift role in EPS.

On April 10, 2023, Ms. Benjamin emailed Ms. Kiirkki – who had recently been assigned to take over management of the EPS social workers – and asked if she could meet to discuss the New Colleague and her continued struggles. *See April Email Correspondence*, attached hereto as **Exhibit E**. Ms. Kiirkki looped in Mr. Weintraub, who was still Ms. Benjamin’s technical supervisor. *Id.* Eleven days later, on April 22nd, Ms. Benjamin wrote an email to Ms. Kiirkki and Mr. Weintraub, accusing Mr. Weintraub of “leaking” her complaint about the New Colleague. *Id.* Ms. Benjamin then wrote an email explaining her concerns: she believed that Mr. Weintraub had made a mistake the previous year when he tried to address a concern that Ms. Benjamin had raised about another coworker. *Id.* With respect to the current situation with the New Colleague, Ms. Benjamin wrote: “I have absolutely nothing to discuss with David. I don’t trust him (and I politely informed him of such when I replied to his text message) nor do I trust [the New Colleague] to be honest about the events surrounding this situation.” *Id.*

At this point, Ms. Benjamin requested a different assignment. Social Work leadership proposed that Ms. Benjamin stay in her current position and schedule, but switch to the alternative weekend rotation so that she would not be scheduled to work alongside the New Colleague. Ms. Benjamin declined the proposal and counter-proposed to work per diem on weekdays in the evenings. Ms. Cummings emphasized to Ms. Benjamin that BCH needed per diem employees to

cover a variety of in-need shifts, including weekend evenings, holidays, and overnights – not just weekdays evenings. In fact, EPS had specific guidelines for per diems that required overnight assignment responsibilities. *See EPS Per Diem Guidelines*, attached hereto as **Exhibit F**. On April 28, 2023, Social Work leadership met with Ms. Benjamin to discuss potential solutions. However, Ms. Benjamin did not want to work the shifts where BCH truly needed staffing (overnights, holidays and weekend evenings), and so she did not accept BCH's proposals. *See Complainant's Resignation Letter*, attached hereto as **Exhibit G**; **Charge ¶11**. At no point during this conversation did Ms. Benjamin ever mention a race-based concern within EPS.

Later that day, on April 28, 2023, Ms. Benjamin wrote a resignation letter to her management:

Dear Asha:

I appreciate the time you and Jen spent with me on Thursday, 4/28; allowing space for me to express my concerns. Thank you for offering solutions in the form of alternative positions within BCH EPS. I respectfully decline.

Please accept this letter as my formal resignation from my position as EPS Social Worker at Boston Children's Hospital (BCH), effective immediately.

I will be in Boston on Saturday, 4/29 and will stop by the EPS office to turn in my ID badge and pager. I will place these items in an envelope addressed to you.

Humbly, I will be forever grateful for the opportunity to work for EPS and the Team at BCH.

*With kind regards,
Carmen Benjamin*

Exhibit G; *see also Charge ¶11.*

III. COMPLAINTANT'S ALLEGATIONS

The specific allegations contained in the Charge, as well as Respondent's response to each of these allegations, are set out below.

Allegation No. 1

I started working for Respondent as a social worker from 2012 to 2016.

Response No. 1

Respondent admits that it hired Ms. Benjamin as a Patient Account Representative II on or about November 5, 2012. Further answering, Ms. Benjamin was transferred into the role of a Senior Patient Experience Representative on or about April 10, 2017. Respondent denies the remaining allegations in Allegation No. 1.

Allegation No. 2

I was rehired from 2020 to 2023 as a part-time employee in the emergency psychiatric department.

Response No. 2

Respondent admits that it hired Ms. Benjamin as a part-time Clinical Social Worker in the Emergency Psychiatric Service on or about November 10, 2020, and she resigned on or about April 28, 2023. *See Exhibits B; G.*

Allegation No. 3

My colleague became pregnant and took maternity leave at the end of 2022.

Response No. 3

Respondent admits that another EPS Clinical Social Worker went on a leave of absence in or around August 7, 2022.

Allegation No. 4

Around October 2022, before my colleague left, a third social worker was hired in our team.

Response No. 4

Respondent admits that it hired another part-time Clinical Social Worker for the same shift as Complainant in the Emergency Psychiatric Service on or about October 11, 2021.

Allegation No. 5

From her hire date, my new coworker was not performing well, creating a hostile work environment.

Response No. 5

Respondent admits that the New Colleague had to increase her comfort with the work of EPS in the immediate period after her hire date. Respondent denies the remaining allegations in Allegation No. 5.

Allegation No. 6

I complained to my supervisor, and he said he would address the situation, but he never did. In the following months, I carried all the work responsibilities in our team. Other social workers outside our team were assisting us, but after a while, they stopped helping us. I brought the issue many times to my supervisor, but he failed to address it.

Response No. 6

Respondent admits that Ms. Benjamin complained to Mr. David Weintraub about the performance of the New Colleague and the general stress of her position. Further answering, Respondent admits that it engaged per diem Social Workers and Social Workers who are regularly assigned to other areas of the Hospital to assist with staffing in EPS as the pandemic and mental health crisis wore on.

Respondent denies the remaining allegations in Allegation No. 6. Mr. Weintraub did, in fact, take several steps to address Ms. Benjamin's complaints by supporting the New Colleague as

she grew more comfortable in her role. Ms. Benjamin was engaged in a challenging position in the middle of the dual crises of the COVID-19 pandemic and the mental health crises. Respondent, as well as Ms. Benjamin's management, took many steps to try to supplement staffing and address the needs of patients, while Hospital systems throughout the Commonwealth were struggling.

Allegation No. 7

I mentioned to my supervisor, that on various occasions when there were African American/Black patients, my coworker would say in a derogatory form that I needed to talk to them because she was not black.

Response No. 7

Respondent denies the Allegations in Allegation No. 7.

Allegation No. 8

In April 2023, I contacted the new department manager because my previous supervisor stepped down for school. The new manager replied to me and included my supervisor in the email.

Response No. 8

Respondent admits that Ms. Benjamin emailed Ms. Asha Kiirkki, LICSW, who had been recently engaged as the Social Work Manager in EPS, on or about April 10, 2023. Further answering, Respondent admits that Ms. Kiirkki responded on April 11, 2023, and included Mr. Weintraub as he continued to be Ms. Benjamin's supervisor at that time. *See Exhibit E.*

Allegation No. 9

Additionally, Human Resources investigated an incident that involved my coworker, and I was a witness. I felt that the work environment was toxic.

Response No. 9

Respondent denies, or lacks sufficient information to answer, the allegations in Allegation No. 9.

Allegation No. 10

Consequently, I asked to be transferred to a Per Diem position. Respondent denied my request. Respondent offered to change my work hours and days of work. However, I couldnt accept the offer because I had a second job, and there were full staff on the days Respondent suggested.

Response No. 10

Respondent admits that Ms. Benjamin asked to change roles and be assigned to a Per Diem position. *See Exhibit E.* Further answering, Respondent admits that it offered Ms. Benjamin a Per Diem role that included standard scheduling responsibilities and offered, alternatively, that she stay in her current role as a part-time Clinical Social Worker but switch to the opposite weekend so that her schedule did not overlap with the New Colleague. Respondent admits that Ms. Benjamin did not accept the available positions. *See Exhibit G.* With respect to the remaining allegations in Allegation No. 10, Respondent denies the allegations.

Allegation No. 11

After I resigned on April 28, 2023, Respondent hired someone else for a Per Diem position. The person hired appeared to be Hispanic.

Response No. 11

Respondent admits that Complainant resigned on or about April 28, 2023, and that EPS hired a Per Diem Clinical Social Worker following Complainant's resignation. *See Exhibit G.* Further answering, the newly hired Clinical Social Worker, who self-identifies as Hispanic, was willing to perform work on the overnight shifts, unlike Complainant.

Allegation No. 12

Respondent has provided schedule adjustments to other employees and special concessions to other social workers. I believe Respondent privileged those employees because of their race and color, white.

Response No. 12

Respondent admits that, from time-to-time, it has provided temporary or one-off scheduling adjustments to Clinical Social Workers in EPS when the adjustment satisfies a staffing need and was within the EPS Per Diem Staffing Guidelines. *See Exhibit F.* Respondent denies the remaining allegations in Allegation No. 12.

Allegation No. 13

Respondent did not give me a valid reason for its actions.

Response No. 13

Respondent denies the allegations in Allegation 13.

Allegation No. 14

I believe I was discriminated against because of my race and color, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, and all applicable Massachusetts State Laws.

Response No. 14

Allegation No. 14 states a legal conclusion to which no response is necessary.

IV. ANALYSIS

Ms. Benjamin alleges that the Hospital discriminated against her on the basis of her race. However, Ms. Benjamin's claims have no merit. Ms. Benjamin voluntarily resigned after a period of open dissatisfaction with her role. She encountered no adverse employment actions while at BCH. Additionally, throughout Ms. Benjamin's tenure, her leadership offered her a variety of alternative scheduling options and roles in an attempt to retain her, but Ms. Benjamin declined these opportunities. Now, in the Charge, Ms. Benjamin has provided no evidence that BCH ever discriminated against her based on her race. Accordingly, the Charge should be dismissed for lack of probable cause.

A. Complainant Cannot State a Claim for Race-Based Termination Discrimination.

Ms. Benjamin’s claim for race-based termination discrimination fails because she has not satisfied her *prima facie* burden. To establish a *prima facie* case of racial discrimination, Ms. Benjamin must show that “(1) [s]he is a member of a protected class; (2) [s]he was qualified for the job; (3) the [Hospital] took an adverse employment action against [her]; and (4) the position remained open or was filled by a person with similar qualifications.” *Kosereis v. Rhode Island*, 331 F.3d 207, 212–13 (1st Cir. 2003).

Here, Ms. Benjamin’s claim fails because, as she admits, she voluntarily resigned and, thus, did not suffer an adverse employment action. See **Exhibit G**; **Charge ¶ 11**. It is axiomatic that an employee who voluntarily resigns has not suffered an adverse employment action. *See Torrech-Hernandez v. GE*, 519 F.3d 41, 50 (1st Cir. 2008) (recognizing that for a resignation to qualify as an adverse employment action, the resignation must be must be “void of choice or free will.”). Further, Ms. Benjamin’s claim fails because her Charge provides absolutely no information regarding whether BCH sought a replacement for her role *as a part-time* Clinical Social Worker position (prong four).¹ *See Worlds v. Thermal Indus., Inc.*, 928 F. Supp. 115, 120 (D. Mass. 1996) (finding that because the plaintiff failed to “present credible evidence that [the employer] sought [similarly qualified persons for her position]”, the plaintiff’s claim of discrimination failed “based upon that deficiency alone.”). Due to the Charge’s fundamental deficiencies, the Charge must be dismissed.

To the extent Ms. Benjamin is asserting that she suffered a constructive discharge, her claim also fails. “A constructive discharge plaintiff has an especially high burden of proof, which requires the demonstration of working conditions that are so difficult or unpleasant that a reasonable person in the employee’s shoes would have felt compelled to resign.” *Green-LaRoche v. Bos. Univ. Neurology Assocs., Inc.*, No. 1784CV02040, 2019 WL 5100407, at *7 (Mass. Super. Sept. 18, 2019) (citations and quotations omitted). It is not enough that a plaintiff suffered “the ordinary slings and arrows that workers routinely encounter in a hard, cold world.” *Lee-Crespo v. Schering-Plough Del Caribe Inc.*, 354 F.3d 34, 45 (1st Cir. 2003). “In order to amount to a constructive discharge, adverse working conditions must be unusually aggravated or amount to a continuous pattern before the situation will be deemed intolerable.” *Id.*

Ms. Benjamin has not met this high burden of proof. Ms. Benjamin makes a single relevant assertion regarding a purported constructive discharge: “on various occasions when there were African American/Black patients, [and a] coworker would say in a derogatory form that [Ms. Benjamin] needed to talk to them because [the coworker] was not black.” **Charge ¶7**. The Hospital vigorously disputes this claim. Ms. Benjamin provides no documentation, she identifies no names, she gives no dates, and she does not describe a single concrete example. There is an obvious explanation for Ms. Benjamin’s failure to provide specific details regarding her alleged harassment: it did not occur.

Even assuming Ms. Benjamin’s allegation is true (which it is not), the behavior Ms. Benjamin complains about is not the type of “unusually aggravated” conduct that is “so difficult or unpleasant that a reasonable person in the employee’s shoes would have felt compelled to resign.” *See, e.g., Vonachen v. Computer Associates Intern., Inc.*, 524 F. Supp. 2d 129, 140 (D. Mass. 2007) (finding no constructive discharge when plaintiff asserted that he was ignored by his

¹ Ms. Benjamin’s sole comparator is an employee who was hired into a Per Diem role, which was not the role Ms. Benjamin worked for the Hospital.

manager, did not receive owed commissions, was assigned to an undesirable sales territory, and was treated coldly by other company leaders). In fact, on multiple occasions, Social Work leadership gave Ms. Benjamin an opportunity to change her team, her schedule or role; Ms. Benjamin rejected these opportunities, even when they represented, according to her, “an ideal match for [her] skill set, interests and career goals.” **Exhibit D**. Ultimately, Ms. Benjamin wanted to continue to work in EPS, and she only resigned after the Hospital was not able to accommodate the specific demands of her desired scheduling. See **Charge ¶10** (“Respondent offered to change my work hours and days of work. However, I couldnt accept the offer because I had a second job, and there were full staff on the days Respondent suggested.”). Ms. Benjamin’s willingness to continue her role in EPS confirms that she was not experiencing the type of conduct that would constitute a constructive discharge. Ultimately, because Ms. Benjamin resigned, her claim of termination discrimination must be dismissed.

Ms. Benjamin’s remaining allegations – regarding the staffing levels in EPS and supporting a new coworker in the challenging environment of EPS – are not relevant. Courts have been clear that a plaintiff seeking to demonstrate a constructive discharge must provide “some showing that the challenged conduct actually was attributable to the alleged discrimination.” *Wagner v. Devine*, 122 F.3d 53, 55 n.4 (1st Cir. 1997) (emphasis added). It is not enough to simply show a difficult work environment; the plaintiff must provide sufficient evidence that the conditions were a result of the discriminatory animus. See *Ahern v. Shinseki*, 629 F.3d 49, 59 (1st Cir. 2010) (“generally disagreeable behavior and discriminatory animus are two different things”). Here, Ms. Benjamin has made no claim that the challenges she encountered regarding staffing levels and supporting her coworker were due to her race. Because Ms. Benjamin’s claims regarding her working environment do not make the required causal showing, her constructive discharge claim also fails.

B. Ms. Benjamin Cannot Establish Any Other Adverse Action Discrimination Claims.

Ms. Benjamin’s other claim of adverse employment action discrimination is also without merit. As mentioned above, the *prima facie* case for an adverse action discrimination case requires that Ms. Benjamin show, amongst other things, that BCH took an adverse employment action against her and she must provide a comparator employee. *Kosereis v. Rhode Island*, 331 F.3d 207, 212–13 (1st Cir. 2003). In the Charge, Ms. Benjamin does neither.

First, Ms. Benjamin has not identified any actionable “adverse action” taken against her. The Massachusetts Supreme Judicial Court has been clear that an action taken by an employer is an “adverse employment action” where it is “substantial enough to have materially disadvantaged an employee.” *Yee v. Massachusetts State Police*, 481 Mass. 290, 296 (2019). The disadvantage must be objectively apparent to a reasonable person in the employee’s position; “subjective feelings of disappointment and disillusionment” are not sufficient. *Id.* at 297. Ms. Benjamin asserts that Boston Children’s Hospital discriminated against her because it made “schedule adjustments to other employees and special concessions to other social workers.” **Charge ¶12**. However, courts have confirmed that an employer’s inability to provide a new role or a specific scheduling change is not an actionable adverse employment action. *Peters v. Wal-Mart Stores E., LP*, 512 F. App’x 622, 626 (7th Cir. 2013) (employer’s refusal to allow plaintiff to change shifts was “not unlawful because schedule assignments generally are not adverse employment action”). Accordingly, the Hospital’s inability to grant Ms. Benjamin her specifically requested schedule or a new role is fundamentally not an “adverse action” that is actionable under the law.

Ms. Benjamin’s allegation also fails because it is devoid of any comparator evidence. While Ms. Benjamin asserts that the Hospital provided adjustments to other employees, she has identified no other employee or example that supports her case. Without comparator evidence or statistical evidence of discrimination, it is impossible to adequately address these serious allegations of discrimination. *See Trustees of Health & Hosps. of the City of Bos., Inc. v. Massachusetts Comm'n Against Discrimination*, 65 Mass. App. Ct. 329, 335 (2005).

Perhaps most importantly, Ms. Benjamin’s assertion completely ignores the reality of her experience at Boston Children’s Hospital. BCH did everything possible to try to retain Ms. Benjamin as an employee: Ms. Benjamin’s leadership offered Ms. Benjamin an alternative 40 hour role in the Hospital, which Ms. Benjamin called “ideal”; she rejected this offer. **Exhibit D**. Ms. Benjamin’s leadership offered to switch Ms. Benjamin’s shift so that she could keep her role but move away from her New Colleague; Ms. Benjamin rejected this offer. **Exhibit G**. Ms. Benjamin’s leadership offered Ms. Benjamin the new role she specifically desired in April 2023, but requested she work the shifts where the Hospital had need at that time; Ms. Benjamin rejected this offer. **Charge ¶10.** In light of BCH’s countless attempts to try to get Ms. Benjamin to stay at BCH, her assertion that BCH discriminated against her based on her race makes absolutely no sense.

C. Complainant’s Hostile Work Environment is Without Merit.

Ms. Benjamin’s purported hostile work environment claim should also be dismissed. To succeed on a hostile work environment claim, Ms. Benjamin is required to show “(1) [s]he is a member of a protected class; (2) [s]he experienced uninvited harassment; (3) the harassment was racially-based; (4) the harassment was so severe or pervasive as to create an abusive work environment; and (5) the harassment was objectively and subjectively offensive.” *Prescott v. Higgins*, 538 F.3d 32, 42 (1st Cir. 2008). Under Massachusetts law, “[a] hostile work environment is one that is ‘pervaded by harassment or abuse, with the resulting intimidation, humiliation, and stigmatization, [and that] poses a formidable barrier to the full participation of an individual in the workplace.’” *Cuddyer v. Stop & Shop Supermarket Co.*, 434 Mass. 521, 532 (2001) (internal citations and quotations omitted).

At the outset, it is worth underscoring again that Boston Children’s Hospital emphatically denies Ms. Benjamin’s claim that she raised race-based complaints about her coworker’s conduct. Ms. Benjamin has alleged that “on various occasions when there were American/Black patients, [her] coworker would say in a derogatory form that [Ms. Benjamin] needed to talk to them because [the coworker] was not black.” **Charge ¶7.** However, Ms. Benjamin has not provided *any* evidence to confirm this allegation, or any other information that evidences that she experienced any level of harassment related to her race (prong two). This is because she never experienced this conduct, and she certainly never shared it with her management. Moreover, without any basic level of factual detail related to this allegation, it is impossible to assert what conduct was outside of the applicable statute of limitations. Even if Ms. Benjamin’s allegation is true (which it is not), given that the New Colleague began in October 2021, many of the conversations that took place between Ms. Benjamin and the New Colleague would be time-barred. *See* 804 C.M.R. 1.04 (providing that a complaint must be filed within 300 days of the unlawful conduct).

Ms. Benjamin also has not established that the conduct at the heart of her hostile work environment claim had anything to do with her race (Prong 3). Ms. Benjamin’s hostile work environment complaint almost entirely relates to the lack of support Ms. Benjamin felt while working in EPS with a new coworker. Ms. Benjamin states as much in the Charge: “my new

coworker was not performing well, creating a hostile work environment.” **Charge ¶5.** The law requires the harassment and hostile work environment to be the intentional product of race-based animus. *See Prescott*, 538 F.3d 32 at 42 (finding that a prima facie case requires “the harassment [to be] racially-based”). Here, Ms. Benjamin has made no allegations connecting the challenges she felt in supporting her coworker or the staffing levels in EPS with any type of race-based motivations. In reality, Ms. Benjamin’s challenging work environment was not unique to her – all healthcare professionals working in the Emergency Department during the peak of the pandemic and the mental health crisis were being pushed to try to address the critical needs of a surging patient population. EPS leadership was so acutely aware of this that they included in the offer letter of Ms. Benjamin and other new social workers a bolded disclaimer: “**Please note that in the event of a public health emergency you may be asked to assume additional duties in other areas of the organization.**” **Exhibit C.**

Ms. Benjamin has also not established that any treatment she allegedly received was so “severe or pervasive” that it altered the conditions of her employment or that the conduct “so objectively and subjectively offensive” that a reasonable person would find it hostile or abusive (prongs four and five). For Ms. Benjamin to establish this element, she would need to demonstrate that the environment in EPS was so “pervaded by harassment or abuse,” that it “result[ed] [in] intimidation, humiliation, and stigmatization,” such that it pose[d] “a formidable barrier” to [her] full participation in the workplace. *Cuddyer v. Stop & Shop Supermarket Co.*, 434 Mass. 521, 532 (2001) (internal quotations and citation omitted). Courts have been clear that “rudeness or ostracism, standing alone, usually is not enough to support a hostile work environment claim.” *Noviello v. City of Boston*, 398 F.3d 76, 92 (1st Cir.2005).

Ms. Benjamin was by all accounts a very strong Clinical Social Worker, and continued to desire to work in the EPS role. Ms. Benjamin did not then, nor has she now, ever asserted that her work was so “pervaded by harassment or abuse,” that it “result[ed] [in] intimidation, humiliation, and stigmatization” for her, particularly on the basis of race. *Cuddyer*, 434 Mass. at 532. Ms. Benjamin’s primarily complaint – that she had to support a coworker too much, or was assuming a disproportionate share of duties – is fundamentally not an actionable hostile work environment complaint. *See Parker v. Zale Corp.*, 864 F.Supp.2d 670, 685 (E.D. Ten. 2012) (“[w]hile dealing with co-workers who do not always perform their job duties or work as hard as they should is unpleasant and difficult, it does not necessarily constitute a hostile or offensive work environment.”); *see also Ponte v. Steelcase Inc.*, 741 F.3d 310, 320 (1st Cir. 2014) (collecting cases demonstrating the level of egregious conduct to “evince a hostile work environment”). Ms. Benjamin’s hostile work environment case must be dismissed.

D. Ms. Benjamin has Failed to Establish a Failure to Hire Claim.

To the extent Ms. Benjamin is asserting a failure to hire claim, it should also be dismissed. To establish a prima facie failure to hire claim, a plaintiff must show the following: (1) she is a member of a protected class; (2) she was qualified for the position to which she applied; (3) she applied to that position and was not hired; and (4) the position to which she applied was filled by a person possessing similar or inferior qualifications. *Cruz v. Mattis*, 861 F.3d 22, 25 (1st Cir. 2017).

Ms. Benjamin’s failure to hire allegations are patently deficient. First, Ms. Benjamin did not apply to any open position at Boston Children’s Hospital. Rather, while employed in a role at the Hospital, Ms. Benjamin asserted that she was interested in leaving her current assignment at

the Hospital and indicated to Social Work leadership that she would be willing to work in a different position – as a Per Diem Clinical Social Worker – that fit her very specific scheduling requirements. Courts have been clear that merely expressing interest in a potential position, without completing an application process, does not constitute an application that satisfies the requirements of the *prima facie* test. *See Avci v. Brennan*, 285 F. Supp. 3d 437, 442 (D. Mass. 2018) (employee’s failure to attend interview for internal position transfer meant he did not “apply for a particular position” and did not establish *prima facie* case). Here, there was no position that was open that even met Complainant’s requirements, and she did not apply to any position. Because Ms. Benjamin did not apply to a position, her claims have not satisfied prong two of the *prima facie* test.

In fact, in attempt to retain Ms. Benjamin, EPS asked Ms. Benjamin about the opportunity to transition to several positions where the Hospital had staffing needs. **Exhibits D; G**. Ms. Benjamin, per her own admission, declined these offers. **Charge ¶10; Exhibit D** (“Thank you for offering solutions in the form of alternative positions within BCH EPS. I respectfully decline.”). Ms. Benjamin’s theory, that Boston Children’s Hospital discriminated against her on the basis of her race by soliciting her interest in alternative positions and scheduling options, but ultimately not being able to meet her demands, does not make sense as a legal theory nor as a matter of common sense.

Finally, Ms. Benjamin’s reference to a Clinical Social Worker who was hired after her departure does not help her case. While the Boston Children’s Hospital did hire a Clinical Social Worker who identifies as Hispanic after Ms. Benjamin’s resignation, this employee was willing to work one of the exact shifts that Ms. Benjamin declined to work (the overnight shift). Ms. Benjamin’s failure to hire claim is wholly without merit and should be dismissed.

E. Boston Children’s Hospital’s Commitment to Equity, Diversity and Inclusion.

Ms. Benjamin’s claims are particularly misplaced in the broader culture of Boston Children’s Hospital and the specific context of the Social Workers in EPS. Within EPS, more than 24% of the Social Workers self-identify as Black, and the diverse nature of BCH’s patient population in the Emergency Department requires consistent engagement across lines of demographic and cultural difference.

Moreover, Boston Children’s Hospital remains committed to the principles of health equity, diversity, inclusion and the promotion of anti-racist principles. *See* “About Boston Children’s Hospital Website”, attached hereto as **Exhibit H** (recognizing that the Hospital is “committed to working together to support health equity and promote anti-racist practices.”). In August 2020, the Hospital announced “Boston Children’s Declaration on Equity, Diversity, and Inclusivity”, which includes commitments to equity, diversity, and various anti-racist practices. *See* “Boston Children’s Declaration on Equity, Diversity, and Inclusivity”, attached hereto as **Exhibit I**. It is simply not credible to assert that in the midst of this environment – which celebrates and promotes equity, diversity and inclusion – that Ms. Benjamin was intentionally discriminated against in a way that forced her to resign. The Charge should be dismissed.

V. AFFIRMATIVE DEFENSES

Unless otherwise specified herein, Respondent denies, or lacks sufficient information to answer, each and every allegation in the Charge.

Respondent asserts the following defenses in response to the allegations contained in the Charge:

1. Complainant failed to establish a *prima facie* case with respect to her claims of discrimination.
2. Complainant failed to file a clear and concise statement of alleged discriminatory acts that would allow the Respondent to sufficiently respond to the allegations.
3. Complainant failed to state a claim upon which relief may be granted.
4. Complainant's allegations concerning matters that occurred prior to the applicable statute of limitations are barred by the statute of limitations.
5. Complainant failed to establish a causal connection between her exercise of statutory rights and any purported adverse employment action.
6. Respondent exercised reasonable care to prevent and correct promptly any harassing behavior.
7. Complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by Respondent.
8. Every action taken by Respondent with respect to Complainant's employment was taken for a legitimate business purpose and was consistent with the law.
9. The Hospital is a charitable corporation and therefore entitled to charitable immunity on some or all of these claims.

BCH reserves its rights to raise additional defenses which may become apparent during the course of the Commission's proceedings.

VI. CONCLUSION

Complainant has presented no evidence for her claims of discrimination. Because Complainant cannot sustain any of her claims, Boston Children's Hospital respectfully requests that the Charge be dismissed for lack of probable cause.

I, upon information and belief, state under the pains and penalties of perjury, that I am authorized to verify this position statement on behalf of the Respondent, Boston Children's Hospital, and that while I do not have personal knowledge of all of the various facts recited in these answers, the response was prepared with the assistance and advice of counsel and information from the Respondent, upon which I have relied; and that the facts stated, subject to these limitations are true to the best of my knowledge, information and belief.

For the Respondent:

1/22/24

Date



Pamela Chamorro

Director - Social Work

Boston Children's Hospital

300 Longwood Avenue, Boston, MA 02115

Legal Counsel:

Date

Benjamin O. Hoerner, Esq.

Associate General Counsel

Office of the General Counsel

Boston Children's Hospital

300 Longwood Avenue, BCH 3046

Boston, MA 02115

Phone: (617) 355-4934

Fax: (617) 730-1952

For the Respondent:

Date

Pamela Chamorro
Director - Social Work
Boston Children's Hospital
300 Longwood Avenue, Boston, MA 02115

Legal Counsel:

1/23/24

Date

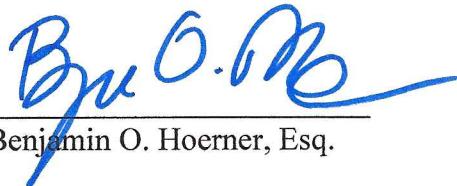


Benjamin O. Hoerner, Esq.
Associate General Counsel
Office of the General Counsel
Boston Children's Hospital
300 Longwood Avenue, BCH 3046
Boston, MA 02115
Phone: (617) 355-4934
Fax: (617) 730-1952

CERTIFICATE OF SERVICE

I, Benjamin O. Hoerner, Esq., attorney for Boston Children's Hospital, hereby certify that on January 23, 2024, I caused notice to be given of the within Position Statement to Complainant at the following address:

Carmen Benjamin
120 California Ave.
Providence, RI 02905



Benjamin O. Hoerner, Esq.

EXHIBIT A

CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		EEOC 523-2023-02250 FEPA
Massachusetts Commission Against Discrimination and EEOC <i>State or local Agency, if any</i>		
I Name (<i>indicate Mr., Ms., Mrs., Miss, Mx., Dr., Hon., Rev.</i>) Ms. Carmen Benjamin	Home Phone (617) 442-0572	Year of Birth 1965
Street Address 120 California Ave PROVIDENCE, RI 02905		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (<i>If more than two, list under PARTICULARS below.</i>)		
Name Boston Children's Hospital	No. Employees, Members 15 - 100 Employees	Phone No.
Street Address 300 LONGWOOD AVE BOSTON, MA 02115		
Name	No. Employees, Members	Phone No.
Street Address City, State and ZIP Code		
DISCRIMINATION BASED ON Color, Race		DATE(S) DISCRIMINATION TOOK PLACE Earliest 10/01/2022 Latest 04/28/2023
THE PARTICULARS ARE (<i>If additional paper is needed, attach extra sheet(s):</i> I started working for Respondent as a social worker from 2012 to 2016. I was rehired from 2020 to 2023 as a part-time employee in the emergency psychiatric department. My colleague became pregnant and took maternity leave at the end of 2022. Around October 2022, before my colleague left, a third social worker was hired in our team. From her hire date, my new coworker was not performing well, creating a hostile work environment. I complained to my supervisor, and he said he would address the situation, but he never did. In the following months, I carried all the work responsibilities in our team. Other social workers outside our team were assisting us, but after a while, they stopped helping us. I brought the issue many times to my supervisor, but he failed to address it. I mentioned to my supervisor, that on various occasions when there were African American/Black patients, my coworker would say in a derogatory form that I needed to talk to them because she was not black. In April 2023, I contacted the new department manager because my previous supervisor stepped down for school. The new manager replied to me and included my supervisor in the email. Additionally, Human Resources investigated an incident that involved my coworker, and I was a witness. I felt that the work environment was toxic. Consequently, I asked to be transferred to a Per Diem position. Respondent denied my request. Respondent offered to change my work hours and days of work. However, I couldn't accept the offer because I had a second job, and there were full staff on the days Respondent		
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – <i>When necessary for State and Local Agency Requirements</i>	
I declare under penalty of perjury that the above is true and correct. Digitally Signed By: Ms. Carmen Benjamin 08/31/2023 <i>Charging Party Signature</i>	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

CHARGE OF DISCRIMINATION	Charge Presented To:	Agency(ies) Charge No(s):
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.	EEOC	523-2023-02250
	FEPA	
Massachusetts Commission Against Discrimination		and EEOC
<i>State or local Agency, if any</i>		

suggested. After I resigned on April 28, 2023, Respondent hired someone else for a Per Diem position. The person hired appeared to be Hispanic. Respondent has provided schedule adjustments to other employees and special concessions to other social workers. I believe Respondent privileged those employees because of their race and color, white. I escalated my concerns to upper management.

Respondent did not give me a valid reason for its actions.

I believe I was discriminated against because of my race and color, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, and all applicable Massachusetts State Laws.

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p> <p>Digitally Signed By: Ms. Carmen Benjamin</p> <p>08/31/2023</p> <p><i>Charging Party Signature</i></p>	<p><i>NOTARY – When necessary for State and Local Agency Requirements</i></p> <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)</p>
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PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

- 1. FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
- 2. AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
- 3. PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
- 4. ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
- 5. WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EXHIBIT B

MSW I, Social Worker (Nonexempt)



Job Code 2203	FLSA Status Nonexempt	Job Grade B09
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Recruiting Summary

General Summary

Provides clinical social work services to assist patients and families with personal, family, medical and environmental difficulties. Performs psychosocial and risk assessments, assigns diagnoses and develops and implements interventions and treatment plans. Participates in planning and implementation of discharge and outpatient service plans and collaborates with health care team and community agencies to plan, implement and follow up on treatment and provision of needed services.

Values Statement

Embodies the Hospital's core values in all interactions with patients, families, and colleagues.

Duties Notice

The statements below describe the essential duties of the person or persons assigned to this job. They are not intended as an exhaustive list of all job duties and responsibilities. In the event of a public health emergency, you may be asked to assume additional duties in other areas of the organization if needed.

Principal Duties and Responsibilities

1. Provides clinical social work services in accordance with established professional, programmatic, and departmental standards and treatment models.
2. Serves as member of interdisciplinary team to plan and implement patient care, assist in program

- development and participate in continuous quality improvement efforts of the service.
3. Provides consultation to interdisciplinary team members on psychosocial issues and specific patient needs. Conducts related staff education programs as assigned.
 4. Participates in departmental meetings, committees, work groups as needed or assigned.
 5. Utilizes supervision to enhance practice. May assist in supervision of Resource Specialist and/or Social Work Interns.
 6. Prepares accurate, thorough, and timely documentation, record keeping and reporting in conformance with hospital, and departmental standards.
 7. Develops and maintains professional knowledge and skills through participation in professional organizations, attendance at conferences, seminars and other continuing education programs.

License

License Required

Current Massachusetts license as a Licensed Clinical Social Worker LCSW

License Preferred

None Specified

Certification/Registration

Certification/Registration Required

None Required

Certification/Registration Preferred

None Specified

Education

Required Education

Master's Degree

Preferred Education

None Specified

Area of Study

Required Area of Study

Social Work

Preferred Area of Study

None Specified

Work Experience

Required Work Experience

None Required

Preferred Work Experience

None Specified

Knowledge, Skills, and Abilities

1. Analytical skills to collect information from diverse sources, apply professional principles in performing various analyses, and summarize the information and data in order to solve problems or design relatively complex systems and programs.
2. Communication skills in order to effectively deal with conflicting views or issues and mediate fair solutions, or well developed writing skills. Fluency in Spanish may be required.

Physical Requirements

1. Frequently lifting and carrying objects weighing up to ten pounds and regularly lifting and carrying patients, children and or objects weighing eleven to twenty pounds.
2. Regularly standing, stooping and bending.
3. Regularly reaching and grasping objects above and below shoulder level and frequently reaching and grasping objects at shoulder level.
4. Regularly grasping and fine manipulation with hands.
5. Regularly proofreading and checking documents for accuracy and inputting and retrieving words or data into or from an automated computer system.

Bloodborne Pathogen Category

No Potential Exposure. Job does not require performance of tasks that involve potential for exposure to blood, body fluids, or tissues.

EXHIBIT C



Human Resources
300 Longwood Avenue, LM6230, Boston, Massachusetts 02115
617-355-6000 | bostonchildrens.org

November 10, 2020

Carmen Benjamin
71 Walnut Park
Apt 3
Boston, MA 02119

Dear Carmen,

On behalf of the entire team, we would like to welcome you to Boston Children's Hospital. Our mission is to provide the highest quality health care, be the leading source of research and discovery, to educate the next generation of leaders in child health and to enhance the health and well-being of the children and families in our local community.

We are delighted that you have accepted our offer for the Clinical Social Worker, MSW I, ED Psych position in Psychiatry. The following provides further detail on your position.

Description of the Position:

The position is part time, 8 hours per week. As discussed, your start date will be November 30, 2020 and you will be reporting to Pam Chamorro. **Please note that in the event of a public health emergency you may be asked to assume additional duties in other areas of the organization.**

Compensation and Benefits:

Your salary will be \$27.79 hourly and you will be paid bi-weekly. Your position is considered non-exempt and has a three month review period which begins on your start date. This role requires a formal training program which extends your review period for three months following the completion of the training program. The total review period will be no longer than six months. This position is not benefits eligible.

Conditions of Employment:

Employment with Boston Children's Hospital is contingent upon a satisfactory reference check, a comprehensive background, including but not limited to criminal history check, verification of licensing, credentials and education (if required for the position), completion of a pre-employment fitness for duty assessment with Occupational Health Services, including required immunizations, execution of a Participation Agreement and proof of your eligibility to work in the United States. Your start date is contingent upon your license being visible on the Massachusetts License Verification website. If your license does not appear by your start date, you cannot report to work or attend orientation and will need to contact your recruiter. You will receive an email from HROnboarding@childrens.harvard.edu directing you to our online portal where you will access more information and complete required forms.

Employment at Boston Children's Hospital is at will. This means that your employment is not for a guaranteed period of time, and either you or the Hospital may terminate the employment relationship at

any time and for any reason. Your employment is also subject to meeting performance expectations, compliance with the Hospital's policies and standards of conduct, and annual infection control requirements (including mandatory influenza vaccination).

We look forward to having you as a member of the Boston Children's team and hope that your new position will be a valuable experience for you. If you have any further questions, please feel free to contact me at 617-680-9406.

Sincerely,

A handwritten signature in black ink that reads "Lynda D. McConville". The signature is fluid and cursive, with "Lynda" and "D." being more stylized and "McConville" being more formal.

Lynda D. McConville
Sr. Talent Acquisition Ambassador

cc: Pam Chamorro

EXHIBIT D

From: Carmen Benjamin <benjamc.msw@gmail.com>
Sent: Thursday, November 3, 2022 6:06 AM
To: Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu>
Cc: McConville, Lynda <Lynda.McConville@childrens.harvard.edu>; Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: Re: Oncology [EXTERNAL]

* External Email - Caution *

Good morning,

Thank you for providing this information. Although the position is an ideal match for my skill set, interests and career goals, I respectfully decline the offer.

My very best,
Carmen Benjamin

On Wed, Nov 2, 2022, 9:03 PM Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu> wrote:

Thank you so much for providing this information, Lynda.

Carmen, please let us know if you have any questions or want to set up a time to discuss. In addition to the transfer date, we also would like to know the hours you plan to work. As noted below, the schedule is Mon, Tues, Thurs, Friday with Wednesdays off. You have flexibility with a start time at 7:30, 8 or 8:30am and an end time of 6:00, 6:30, 7pm.

Please reach out with any questions. We look forward to hearing from you.

Thank you,

Jen

From: McConville, Lynda <Lynda.McConville@childrens.harvard.edu>
Sent: Tuesday, November 1, 2022 10:46 AM
To: Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu>; Carmen Benjamin <benjamc.msw@gmail.com>
Cc: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: RE: Oncology [EXTERNAL]

Good morning Jen and Carmen:

I cannot provide a transfer (offer) letter without a start date.

Carmen:

For this 40-hour SW position in Oncology, your offer is \$72,895.51/year. (A lateral move based on your current hourly rate). FYI - your yearly review is also coming up at the end of November. When will you receive your LICSW? Once you do, you will receive a 10% increase.

I hope this helps. Once I have the transfer date, I will be able to process your hire. Thank you!

Regards,

Lynda

From: Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu>
Sent: Tuesday, November 1, 2022 9:39 AM
To: Carmen Benjamin <benjamc.msw@gmail.com>
Cc: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>; McConville, Lynda <Lynda.McConville@childrens.harvard.edu>
Subject: Re: Oncology [EXTERNAL]

Thank you for your response, Carmen. I was not aware you were waiting to receive a formal offer. I am including Lynda McConville, Senior HR Recruiter, who works with Social Work. She can be of help with this.

Best,
Jen

From: Carmen Benjamin <benjamc.msw@gmail.com>
Sent: Tuesday, November 1, 2022 8:34:23 AM
To: Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu>
Cc: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: Re: FW: Oncology [EXTERNAL]

* External Email - Caution *

Good morning,

I've been waiting to receive a formal offer in writing including salary, please.

Thank you,

Carmen

On Tue, Nov 1, 2022, 7:18 AM Cummings, Jennifer (Psychiatry)
<Jennifer.Cummings2@childrens.harvard.edu> wrote:

Adding your personal email in the event you aren't checking BCH. Please get back to me with the transition date to Stem Cell and the hours based on the options below. I look forward to hearing from you soon.

Thanks,

Jen

From: Cummings, Jennifer (Psychiatry)
Sent: Friday, October 28, 2022 12:31 PM
To: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: RE: Oncology

Hi Carmen,

Just following up to see if you can send me a tentative transition date and preferred schedule?

Thank you!
Jen

From: Cummings, Jennifer (Psychiatry)
Sent: Tuesday, October 25, 2022 8:56 PM
To: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: Oncology

Hi Carmen,

Congratulations again! I am thrilled for you! I just wanted to circle back on the schedule. The schedule is Mon, Tues, Thurs, Friday with Wednesdays off. You can have flexibility with a start time at 7:30, 8 or 8:30 and an end time of 6:00, 6:30, 7. Please let me know your preference as well as the transfer date at your earliest convenience.

Thanks,
Jen

EXHIBIT E

From: Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>
Sent: Monday, April 24, 2023 12:51 PM
To: Weintraub, David <David.Weintraub@childrens.harvard.edu>
Subject: FW: Miscellaneous

From: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Sent: Saturday, April 22, 2023 8:20 PM
To: Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>
Cc: Cummings, Jennifer (Psychiatry) <Jennifer.Cummings2@childrens.harvard.edu>
Subject: Fw: Miscellaneous

Good evening,

Today has been a difficult day for me. Please consider reviewing the trail of emails for context.

Sadly, it is almost comical as soon as I sent the response below, Julia's cell phone started blowing up and she began responding frantically. Just as comical and bizarre how she attempted to shift the atmosphere to what I know to be her usual. It was too late and so obvious.

Further, the text David sent to my cell phone, "can we please talk today" after all Julia's frantic texting and then her sending out her July vacation request as soon as I text David that I wanted to give my two week's notice - it is all simply too much.

This is not a one off with David. Last year, I was confronted by Shenay with something I mentioned to David in confidence - asking him to make a general announcement in a staff meeting versus singling her out. I noticed a pattern and brought it to David's attention, as it was happening soon after Dominique went out on maternity leave. And I only spoke on it because Julia was not pulling her weight in EPS and Shenay was picking up a lot of shifts back then - prepping for her wedding. Shenay confronted me about what I said to David - right there in the EPS office, verbatim! I was in shock but recovered enough to confirm that I said what I said and communicated to her that it wasn't personal, but it was for all who were considering picking up shifts in Dominique's absence. Folk were doing the absolute least and leaving as early as 1PM. I could not carry the weight of EPS alone and couldn't foresee myself enduring for the duration of Dominique's maternity leave. As a result, I brought my concern to David. The entire situation was horrible, and it should have never happened, as I went to David and specifically asked him not to single her out - we were friends prior!

The encounter with Shenay left me scarred and non-trusting of David - as I mentioned to you, Asha just last week (but didn't mention his name.) However, this situation today is on an entirely different level.

Respectfully, I have absolutely nothing to discuss with David. I don't trust him (and I politely informed him of such when I replied to his text message) nor do I trust Julia to be honest about the events surrounding this situation, as I have heard and seen her in action including the one involving Dr. Simon.

BCH has been a strong force in my career journey since 2012. It pains me to feel like I have been placed in a position (time after time) to want to give up EPS because I have been forced to feel the lack of a supportive trusting work environment. The damage is complete. It is incredibly painful as I think about how many times in the past 1.5 years I've wanted to throw in towel because of Julia but always managed to try to make it work. I have no more words and no more will.

Please accept my apology for the length of this correspondence. However, I needed a way to attempt to process the pressure and the stress of what happened in the office today.

I have witnessed my growth as a Clinical Social Worker and attribute that to my EPS work, 100%. For months I've been considering asking if I can transfer to the opposite week (Melissa's team but I am deathly afraid of mice and would be terrified to have to go to the sub-basement to work as the 4th person ☺) and actually, don't even know if this would be an option.

I am wondering if we can discuss me transitioning to per-diem, please?

Respectfully,

Carmen Benjamin, MSW, LICSW
Emergency Psychiatry Social Worker
Children's Hospital Boston
300 Longwood Avenue
Boston, MA 02115
carmen.benjamin@childrens.harvard.edu
SUPPORT HEALTH EQUITY END RACISM

From: Benjamin, Carmen
Sent: Saturday, April 22, 2023 8:57 AM
To: Weintraub, David <David.Weintraub@childrens.harvard.edu>; Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>
Subject: RE: Miscellaneous

Good morning,

Ok. So this explains why Julia has come in to this office this morning very indifferent toward me. My request must have gotten leaked. Sadly, very predictable.

I am all set. I will continue to deal as long as I can.

Respectfully,
Carmen

From: Weintraub, David <David.Weintraub@childrens.harvard.edu>
Sent: Tuesday, April 11, 2023 10:57 AM

To: Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>; Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Subject: RE: Miscellaneous

Hi Carmen and Asha,
Thanks for looping me in. I am free on Thursday 4/13 most of the day!
Thanks,
David

From: Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>
Sent: Tuesday, April 11, 2023 10:55 AM
To: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Cc: Weintraub, David <David.Weintraub@childrens.harvard.edu>
Subject: RE: Miscellaneous

Hi Carmen,
Thanks for reaching out. I appreciate the feedback for Nadia. Sounds like she's off to a fantastic start, I'm so pleased!

Re: Julia, yes, let's chat about this. I know this has been a source of distress for you for some time now. I'm including David on this as well as he's your technically your supervisor.

I'm free for a call pretty much anytime on Wed 4/12 for Thurs 4/13.
Carmen/David – what works for you?

Thanks,
Asha

From: Benjamin, Carmen <Carmen.Benjamin@childrens.harvard.edu>
Sent: Monday, April 10, 2023 11:28 AM
To: Kiirikki, Asha <Asha.Kiirikki@childrens.harvard.edu>
Subject: Miscellaneous

Good morning Asha,

I wanted to send this email early this morning but my morning got away from me and this is the first opportunity that I have.

First, I want to provide positive feedback regarding Nadia Nesmachnov - shadowing this weekend. On Saturday she shadowed Tatiana and me on Sunday. I conducted an assessment on Sunday and invited her to accompany me. She engaged well with our kiddo, and asked appropriate clarifying questions. Her clinical interpretation into the presenting problem was strong and admirable. As a result, I offered her the opportunity to complete the assessment in Power Chart; while I made the collateral calls, reviewed the case with ED Psych Attending and made myself available to assist/review her documentation. Nadia was thankful and eager to write up the evaluation. Although we worked on it together, I asked her to sign off on it and complete the billing sheet - which she did. I enjoyed working with Nadia on this evaluation and believe she will be an asset to EPS.

Last, I continue to struggle to work with Julia. It is all too much to type here. As a result, I am wondering if we can schedule time to communicate by telephone? Please let me know your availability and I will coordinate within my schedule.

Respectfully,
Carmen Benjamin

Carmen Benjamin, MSW, LICSW
Emergency Psychiatry Social Worker
Children's Hospital Boston
300 Longwood Avenue
Boston, MA 02115
carmen.benjamin@childrens.harvard.edu
SUPPORT HEALTH EQUITY END RACISM

EXHIBIT F

EMERGENCY PSYCHIATRY SERVICE: Per diem Social Work Staff Guidelines

PURPOSE: To provide guidelines for the scheduling, use, and responsibilities of per diem social work staff in the Emergency Psychiatry Service when covering shifts or when on-call.

DEFINITIONS: The Emergency Psychiatry Service (EPS) is a 24/7 multidisciplinary consultation service in the Emergency Department that consists of psychiatric social workers, child psychiatrists, a psychiatric nurse practitioner and trainees in psychiatry, psychology and social work. The EPS utilizes per diem social workers to staff in house and on-call shifts and to provide support to the Emergency Department (ED) as well as to the inpatient medical and surgical floors. A per diem social worker is defined as any social worker employed by Boston Children's Hospital only on an as needed or on-call basis in order to meet service scheduling and patient care needs.

PRINCIPLE: Per diem EPS Clinicians are a valued asset and resource to the Department of Psychiatry and Behavioral Sciences. The social work staff are experienced Boston Children's Hospital social workers with clinical and interpersonal skills.

GUIDELINES FOR ALL EPS Per diem staff:

- Expected to attend monthly Staff meetings (currently third Wednesday of every month from 5-6pm). If unable to attend, must thoroughly read through meeting minutes and acknowledge understanding of information to EPS social work manager or ask for clarification.
- Expected to complete all relevant Net learnings, Social Work Competencies, and other trainings/MYRs.
- Expected to work collaboratively and collegially with multidisciplinary staff in the ED and throughout the hospital.
- follow guidelines for providing coverage for Part-time Staff on that respective service
- Responsibilities for BOTH first and second call include:
 - Being on pager for the full shift 3p-11p or 11p-8a shift.
 - Expected to respond to all pages within 15 minutes of receipt of the page.

AVAILABILITY:

- Must work no fewer than 1 shift per month.
- Must check hospital email at least once per week.
- If you are unable to work your shift - send email looking for coverage and notify supervisor on call via phone or page.
- If you are unable to work your shift due to illness - notify supervisor on call via phone or page.
- Must work two hospital holidays shifts each year or one holiday if working Christmas. Hospital holidays include New Year's Day, MLK Day, Presidents Day, Patriot's Day Memorial Day, Juneteenth, 4th of July, Labor Day, Thanksgiving, & Christmas Day.

TIME REPORTING: *I agree to sign off on my time in Kronos accurately and completely before the deadline each payroll period. I understand that my position is non-exempt. I understand that I need to log in and out of my shift. I understand that I must take a 30-minute, unpaid meal break if I work more than 6 hours in a shift.*

ANNUAL & OTHER REQUIREMENTS: *I agree to complete my Mandatory Yearly Reviews (MYRS), immunizations, licensure, performance review, and competency requirements each year by the stated deadlines. I agree to complete any required trainings in the Department of Psychiatry and Behavioral Sciences. I agree to complete yearly Social Work Competencies. I will follow all policies and procedures established for clinicians in the Department of Psychiatry and Behavioral Sciences, and to participate in quality improvement and additional training activities where indicated.*



Emergency
Psychiatry

COMMUNICATION: *I will respond to Emergency Psychiatry Service communications relating to patient care as soon as I receive the message. Unless I have previously communicated that I will be away or otherwise unavailable, I will answer all e-mail communication related to scheduling, time keeping, and documentation within 24 hours.*

EXHIBIT G

Carmen Benjamin
120 California Avenue
Providence, RI 02905
(617) 442-0572 / benjamc.msw@gmail.com

April 28, 2023

Ms. Asha Kiirkki
Social Work Manager
Emergency Psychiatry Service (EPS)
Boston Children's Hospital
300 Longwood Avenue
Boston, MA 02115

Dear Asha,

I appreciate the time you and Jen spent with me on Thursday, 4/28; allowing space for me to express my concerns. Thank you for offering solutions in the form of alternative positions within BCH EPS. I respectfully decline.

Please accept this letter as my formal resignation from my position as EPS Social Worker at Boston Children's Hospital (BCH), effective immediately.

I will be in Boston on Saturday, 4/29 and will stop by the EPS office to turn in my ID badge and pager. I will place these items in an envelope addressed to you.

Humbly, I will be forever grateful for the opportunity to work for EPS and the Team at BCH.

With kind regards,
Carmen Benjamin

EXHIBIT H



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Respect
Inclusivity
Teamwork
Kindness

It's the
Boston
Children's
Way

At Boston Children's, we hold ourselves to the highest values of respect, inclusivity, teamwork, and kindness to provide patients, families, and each other with an experience equal or better than the care we deliver.

Boston Children's Hospital is dedicated to improving and advancing the health and well-being of children around the world through its life-changing work in clinical care, biomedical research, medical education and community engagement.

Boston Children's is ranked among the best in the nation by [U.S. News and World Report](#). It is home to the world's largest pediatric research enterprise, and it is the leading recipient of pediatric research funding from the National Institutes of Health. It is the primary pediatric teaching hospital for Harvard Medical School. Boston Children's treats more children with rare diseases and complex conditions than any other hospital.



Vision and mission

For over [150 years](#), Boston Children's Hospital has maintained the same vision: to advance pediatric care worldwide. Our four-part mission is to:

- provide the highest quality of health care
- lead the way in research and discovery
- educate the next generation of leaders in health care
- enhance the health and well-being of the children and families in our local community

Boston Children's Hospital's Declaration on Equity, Diversity, and Inclusivity

Boston Children's is dedicated to creating a culture where all patients, families, clinicians, researchers, staff, and communities feel empowered and supported. We are committed to working together to support health equity and promote anti-racist practices. This is not merely an aspirational goal, and in August 2020, we shared our formal Declaration on Equity, Diversity and Inclusivity that will be our guiding compass in making this goal a reality.

- Learn more about the [Office of Health Equity and Inclusion](#).
- Learn more about our commitment to [LGBTQ Equality](#).
- Learn more about our commitment to [Supplier Diversity](#).

Collecting Race, Ethnicity, Language, and Education Level from Patients and Families

At Boston Children's Hospital, we are committed to providing our patients the best health care. Getting to know the background and preferences of our patients helps us deliver high quality care.

	Why are you collecting this information?
	Who can see this information?
	What will you do with this information?
	What if I don't want to share my child's information with you?
	Is this an immigration/citizenship question?
	Can't you tell by looking at me or my child?
	What if I am more than one race?
	What should I put if I'm an American?
	Are other hospitals collecting this?
	How are race and ethnicity related to my child's health?

Our capacity

With more than 40 clinical departments and 258 specialized clinical programs, Boston Children's is one of the largest pediatric medical centers in the United States. We provide a complete range of health care services for children of all ages, and in some cases, we can offer fetal interventions and treatments for adults.

Learn more about our extensive [expansion and renewal projects](#) that will increase capacity and ensure the highest quality care for patients and families.

Locations

Whether you're living in Boston, the suburbs or somewhere else in the Northeast, the world-class care of Boston Children's Hospital is never far away. Boston Children's is ranked among the best in the nation by [U.S. News & World Report](#). Families are always our #1 partners in care.

Patient and Family Experience Data

4.7



Ambulatory Clinic

Based on 21,708 surveys

4.8



Day Surgery

Based on 1,783 surveys

4.8



Inpatient

Based on 1,123 surveys

Boston Children's Hospital is committed to better understanding and improving the experiences for our patients and families. After a visit to Boston Children's, you may receive a survey by mail, email, or text message from Press Ganey, a nationally recognized survey vendor. Your feedback is important to us. Responses from the surveys help us improve and provide the best care to all patients and families.

The star ratings displayed are the average of responses collected in our Patient Experience Surveys. This rating averages the scores for the 'Would you recommend Boston Children's to your friends and family' question, displayed on a scale of 1 to 5, with 5 indicating the best experience.



Our leadership

"The commitment and compassion with which we care for all children and families is matched only by the pioneering spirit of discovery and innovation that drives us to think differently, to find answers, and to build a better tomorrow for children everywhere."

Our partnerships

We are proud to be the primary teaching hospital of Harvard Medical School, and our Nursing Department partners with 27 schools of nursing throughout Massachusetts and New England.

[Dana-Farber/Boston Children's Cancer and Blood Disorders Center](#), an integrated pediatric hematology and oncology program through Dana-Farber Cancer Institute and Boston Children's Hospital, provides – in one specialized program. We also maintain close working relationships with Brigham and Women's Hospital, Massachusetts General Hospital and many other area hospitals in caring for our patients.

Boston Children's Hospital Employee Medical Plan Price Transparency

This link leads to the machine-readable files that are made available in response to the federal Transparency in Coverage Rule and includes negotiated service rates and out-of-network allowed amounts between health plans and healthcare providers. The machine-readable files are formatted to allow researchers, regulators, and application developers to more easily access and analyze data. It is not intended to be a cost comparison tool for employees and dependents in Boston Children's Hospital's medical plans. To access BCBSMA's plan cost comparison tools, please visit <https://Transparency-in-Coverage.Bluecrossma.com>.

Contact Us

EXHIBIT I



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For more than 150 years, Boston Children's has embodied a culture of innovation and scientific discovery, dedicated to improving the lives of children and families. We have taken pride in providing a safe and welcoming environment for those who come to us for care and every member of our team.

Yet racism, discrimination, and hate continue to harm many of members of the Boston Children's community physically, mentally, and emotionally. Further, the COVID-19 pandemic and its disproportionate toll on underrepresented communities has made health disparities that undermine children's health even more apparent.

Boston Children's is unwavering in its commitment to ensuring every child has access to the care they need and deserve. To remain true to this commitment, the hospital has implemented the following ongoing initiatives.

Boston Children's Declaration on Equity, Diversity, and Inclusivity

In 2020, as part of a national reckoning with racial injustice and health disparities, Boston Children's released a Declaration on Equity, Diversity, and Inclusivity. The declaration established six goals to elevate health equity as an enterprise priority, core to everything we do.

As we plan and strategize for the future, these goals serve as a roadmap in our work to recognize the impact of racism on children's health, promote optimal health for our diverse patients, and ensure Boston Children's is a welcoming place for all who seek our care as well as every person who works here.

- **Goal 1:** Boston Children's is committed to being an inclusive environment that does not tolerate any form of racism, discrimination, or bias.
- **Goal 2:** Boston Children's is committed to recruiting, developing, and retaining a diverse workforce.
- **Goal 3:** Boston Children's is committed to eliminating structural racism from all policies, guidelines, and practices.
- **Goal 4:** Boston Children's is committed to comprehensively educating employees on the impact of racism on child health, unconscious bias, bystander-upstander awareness, and the role of difficult conversations in culturally effective pediatric care delivery.
- **Goal 5:** Boston Children's is committed to being a leader in eliminating child health disparities in our community and our nation.
- **Goal 6:** Boston Children's Hospital is committed to leading in the development, implementation, and tracking of metrics for equity, diversity, and inclusion.

Office of Health Equity and Inclusion

The [Office of Health Equity and Inclusion](#) works with departments and divisions throughout Boston Children's to support health equity and promote culturally effective care. Among our many initiatives, we work to recruit, develop, and advance a diverse, inclusive workforce. Our enterprise-wide training on standing up to microaggressions helps ensure every Boston Children's patient and staff feels welcome and respected here.

Sandra L. Fenwick Institute for Pediatric Health Equity and Inclusion

The [Sandra L. Fenwick Institute for Pediatric Health Equity and Inclusion](#) advances pediatric health equity locally, nationally, and around the world. The institute carries out this work in three primary areas: health equity research, inclusion, and public policy.

Contact Us