



11357 Nuckols Road PMB 115  
Glen Allen, VA 23059

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*VIA ELECTRONIC MAIL ONLY:* [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
Office for Civil Rights  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201

**RE: Complaint Under Title VI – Race-Based Discriminatory Practices at The Duke University Health System**

Dear Sirs or Madams:

I write to file a formal complaint against The Duke University Health System (“DUHS”)<sup>1</sup> for engaging in unlawful race-based discrimination in its programs and policies. DUHS, as a recipient of federal funds, is obligated under Title VI of the Civil Rights Act of 1964 to operate all programs and activities free from discrimination on the basis of race, color, or national origin. Despite these legal mandates, DUHS has implemented multiple initiatives that explicitly favor or exclude individuals based on race. This complaint outlines DUHS's specific discriminatory programs and actions, details how they violate federal civil rights laws and regulations, and describes the direct harm caused to students and others. I respectfully request that the HHS Office for Civil Rights investigate these practices and take appropriate corrective action to ensure DUHS’s compliance with federal law.

## **I. Federal Funding and Applicability of Title VI**

DUHS is a recipient of federal financial assistance and is therefore obligated to comply with the nondiscrimination mandates of Title VI of the Civil Rights Act of 1964. Title VI provides in unequivocal terms that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to

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<sup>1</sup> The Duke University Health System “Duke Health integrates the Duke University Health System (all of our hospitals and clinics), Duke University School of Medicine, Duke-NUS Medical School, Duke University School of Nursing, Duke Health Integrated Practice (Duke physicians practice), and incorporates the health and health research programs within the Duke Global Health Institute as well as those in schools and centers across Duke University.” See *About Duke Health*, DUKE HEALTH, available at: <https://www.dukehealth.org/about-duke-health> (last visited Feb. 21, 2025).

discrimination under any program or activity receiving Federal financial assistance.”<sup>2</sup> There is little room for interpretation where the law is so explicit.<sup>3</sup> The statute’s broad language covers any form of differential treatment by race in any program or activity receiving federal funds. Title VI “makes no allowance” for racial considerations in education programs.

Title VI “prohibits a recipient of federal funds from intentionally treating one person worse than another similarly situated person because of his race, color, or national origin.”<sup>4</sup> This prohibition applies to any institution, like DUHS, receiving federal funds, including federal education grants, research funding, and student loans. Significantly, Duke University School of Medicine graduates have an *average* of nearly \$160,000 of debt, overwhelmingly the product of federal student loans.<sup>5</sup> It is irrelevant if other factors play into DUHS’s admissions and hiring decisions, or if DUHS seeks to “advance some further benign ‘intention,’” Title VI “prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin and without regard to any other reason or motive the recipient might assert.”<sup>6</sup> Under Title VI, a recipient of federal funding, like DUHS, may not, on the basis of race (among other things):

- “[p]rovide a different service or other benefit, or provide services or benefits in a different manner from those provided to others”;
- “[s]egregate or separately treat individuals in any matter related to the receipt of any service or other benefit”;
- “[u]tilize criteria or methods of administration which subject individuals to discrimination”; or
- otherwise implement racial preferences, or rest its actions upon any racially discriminatory purpose or intention—whether in whole or in part.<sup>7</sup>

DUHS is federally funded and must adhere to Title VI, which categorically forbids racial discrimination in programs and activities that receive federal support. There is no exemption for

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<sup>2</sup> See, e.g., 42 U.S.C. § 2000d.

<sup>3</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 287 (2023) (Gorsuch, J., concurring).

<sup>4</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 289 (2023) (Gorsuch, J., concurring).

<sup>5</sup> *MSAR Debt Information*, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, available at: <https://students-residents.aamc.org/system/files/2024-09/MSAR014%20-%20MSAR%20Debt%20%20Information.pdf> (last visited Feb. 16, 2025).

<sup>6</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 289-290 (2023) (Gorsuch, J., concurring).

<sup>7</sup> U.S. Dep’t of Health & Hum. Servs., *Civil Rights for Individuals and Advocates - Discrimination on the Basis of Race, Color, or National Origin*, available at: <https://www.hhs.gov/civil-rights/for-individuals/race/index.html> (last visited July 30, 2024); 45 C.F.R. § 80.3(b)(1)–(3); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977); U.S. Dep’t. of Just., Civ. Rts. Div., *Title VI Legal Manual, Section VI Proving Discrim. – Intentional Discrim.*, available at: <https://www.justice.gov/crt/fcs/T6manual>.

“well-intentioned” or “diversity-driven” discrimination – the legal mandate is that institutions must operate in a colorblind fashion when providing opportunities or benefits. Any racial classification or preference by DUHS runs contrary to its federal civil rights obligations.

## II. Duke University Health System Discriminates on the Basis of Race

### A. Race-Conscious Recruitment and Admissions

Racial preferences pervade DUHS’s student recruitment and admissions, resulting in a student body composed of individuals who reflect preferred skin colors, rather than individual merit. Indeed, internal DUHS documents proudly document that deliberate admissions decisions to boost enrollment of certain racial groups.<sup>8</sup> Within DUHS, Duke’s School of Medicine notes that “transformations to [health professions] program admissions” expanded “BIPOC enrollment” in recent years—a tacit admission that DUHS selects students because of their race.<sup>9</sup> DUHS’s diversity plan explicitly calls for adapting admissions processes to increase acceptance of underrepresented minority<sup>10</sup> applicants, even pairing prospective minority candidates with current minority students to “create community and a sense of belonging” during the admissions process through a “holistic review.”<sup>11</sup> These efforts plainly give special treatment to applicants of certain races, ensuring that race is a determinative factor in who is recruited and admitted.<sup>12</sup>

Race-conscious recruitment is pervasive throughout DUHS. The Department of Medicine’s Minority Recruitment and Retention Committee hosts exclusive “second-look” visit programs only for residency applicants from “under-represented racial and ethnic groups,” giving preferred racial groups additional interviews, networking, and favoritism not available to disfavored races.<sup>13</sup> Likewise, DUHS offers a funded Visting Clinical Scholars Program open only to fourth-year medical students who are “underrepresented minorities” or “socioeconomically disadvantaged,”

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<sup>8</sup> Mary Klotman, *Dismantling Racism and Advancing Equity, Diversity, and Inclusion in the School of Medicine*, DUKE UNIVERSITY SCHOOL OF MEDICINE (June 2021), available at: [https://medschool.duke.edu/sites/default/files/2021-08/dismantling\\_racism\\_and\\_advancing\\_equity\\_diversity\\_and\\_inclusion\\_ADA.pdf](https://medschool.duke.edu/sites/default/files/2021-08/dismantling_racism_and_advancing_equity_diversity_and_inclusion_ADA.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> In the context of medical schools and health care systems, “underrepresented minority” nearly universally refers to *at least* Black, Indigenous, and People of Color (BIPOC). This is reflected across the various programs and policies held at DUHS. Though some programs have more expansive definitions, including sex, gender, and socioeconomics, race is always part of the definition. See Bridget Balch, *Underrepresented Voices in Medicine Tell Their Stories*, AAMC (June 1, 2021), available at: <https://www.aamc.org/news/underrepresented-voices-medicine-tell-their-stories>.

<sup>11</sup> *Id.*

<sup>12</sup> *Rhiannon Giles, What Does ‘Holistic Admissions’ Really Mean*, DUKE UNIVERSITY SCHOOL OF MEDICINE (Oct. 1, 2023), available at: <https://medschool.duke.edu/blog/what-does-holistic-admissions-really-mean>.

<sup>13</sup> *Diversity, Equity, and Inclusion in the Department of Medicine*, DUKE DEPARTMENT OF MEDICINE, (2023), available at: [https://medicine.duke.edu/sites/default/files/2023-08/Diversity%20brochure2023\\_update5\\_print.pdf#:~:text=Internal%20Medicine,members%20serve%20as%20faculty%20advisors.](https://medicine.duke.edu/sites/default/files/2023-08/Diversity%20brochure2023_update5_print.pdf#:~:text=Internal%20Medicine,members%20serve%20as%20faculty%20advisors.)

to invite them for clerkships as a pipeline into DUHS's residency programs.<sup>14</sup> The Visiting Clinical Scholars Program invites students from across the country to participate in a 4-week "clinical elective" at Duke, so long as they belong to a handful of ordained minority groups including "Black or African American" and "Native Hawaiians." By DUHS's own admission, this program is a "strategic investment in diversifying the pool of residents" with the aim of eventually "impact[ing] the diversity" of Duke's fellows and faculty.<sup>15</sup> Non-minority medical students are ineligible for these opportunities solely because of their race.

DUHS is seeking a predefined racial composition of its student body and workforce, "diversifying" by disfavoring some races in favor of others. Such racial quotas are categorically unlawful.<sup>16</sup> DUHS is operating a two-track system where certain applicants are advanced or selected because of race rather than qualifications. Title VI does not allow this.<sup>17</sup>

## **B. Scholarships and Financial Aid Preferences**

Within DUHS's numerous scholarships and grants, many restrict eligibility to certain races or give preference to minority applicants. For instance, the Duke Clinical & Translational Science Award program—funded by federal grants—seeks to "provide underrepresented minorities the opportunity for career development in clinical research."<sup>18</sup> DUHS's Office of Financial Aid publicizes and facilitates a number of external awards that are exclusive to specific racial groups. While the scholarships are funded and administered by private entities, the university's active facilitation through its federally funded infrastructure implicates Title VI by promoting and perpetuating racial discrimination. The university's website, including its scholarship pages, is a core component of its operations—used for recruitment, student services, and financial aid coordination. This infrastructure is undeniably supported by federal funding. DUHS is using federally funded infrastructure to facilitate and profit from racially discriminatory scholarships.

One such program, administered in partnership with a private foundation, awards \$10,000 solely to medical students who belong to American Medical Association-defined underrepresented groups, which include "Alaska natives, African-Americans, Native Hawaiians, American Indians, Mexican-Americans and mainland Puerto Ricans."<sup>19</sup> Another DUHS-listed scholarship offers

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<sup>14</sup> *EDI Pipeline Programs*, DUKE UNIVERSITY SCHOOL OF MEDICINE, <https://medschool.duke.edu/edi-pipeline-programs> (last visited Feb. 20, 2025).

<sup>15</sup> *EDI Pipeline Programs*, Duke UNIVERSITY SCHOOL OF MEDICINE, <https://medschool.duke.edu/edi-pipeline-programs> (last visited Feb. 20, 2025).

<sup>16</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 287 (2023) (Gorsuch, J, concurring).

<sup>17</sup> See, e.g., 42 U.S.C. § 2000d.

<sup>18</sup> *MRC Scholarship Opportunities*, DUKE UNIVERSITY SCHOOL OF MEDICINE, available at: <https://medschool.duke.edu/education/health-professions-education-programs/multicultural-resource-center/mrc-scholarship#:~:text=The%20Duke%20CTSA%20Scholarship%20program,on%20or%20about%20May%201.> (last visited Feb. 20, 2025).

<sup>19</sup> *External Scholarship Information*, DUKE UNIVERSITY SCHOOL OF MEDICINE, available at: <https://medschool.duke.edu/education/health-professions-education-programs/student-services/office-financial-aid->

funds exclusively to “students who identify as underrepresented minorities” in North Carolina medical schools.<sup>20</sup> In each case, students not part of favored races are categorically ineligible for these financial benefits, no matter how strong their academic merit or financial need, purely because of their race.

Federal funding cannot be used to segregate scholarships by race or to confer advantages on select racial groups. By administering or promoting racially discriminatory scholarships, DUHS is denying the benefits of its programs to certain students based on race.

### **C. Race-Exclusive Pipeline and Enrichment Programs**

DUHS hosts several pipeline, mentoring, and enrichment programs that are overtly race-exclusive. These programs offer opportunities, training, or advantages only to members of certain racial groups, establishing a two-tier system within DUHS’s educational and professional environment. These programs are openly advertised as serving “underrepresented” or specific minority communities, to the exclusion of others.

One official Duke School of Medicine program that aims to “develop and support” Black male faculty, students, and trainees is known as the Black Men in Medicine (BMiM) Initiative.<sup>21</sup> BMiM was created to address the “historical underrepresentation of black men in medicine” and focuses exclusively on one racial group.<sup>22</sup> It hosts networking and support sessions specifically for Black male participants, creating a de facto segregated space within the medical school. The U.S. Department of Education’s Office for Civil Rights has already opened an investigation into this very program, recognizing that limiting an initiative to “black male” individuals likely violates Title VI (race) and Title IX (sex).<sup>23</sup>

DUHS runs multiple pathway programs that explicitly target “URM” (underrepresented minority) students for special training and recruitment through their “Equity, Diversity, and Inclusion

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student-10#:~:text=reward%C2%A0underrepresented%20minority%20medical%20students%20for,Americans (last visited Feb. 20, 2025).

<sup>20</sup> *NC Diversity & Equity in Emergency Medicine Scholarship*, Triangle Community Foundation, available at: <https://trianglecf.org/award/nc-diversity-equity-in-emergency-medicine-scholarship/> (last visited (Feb. 21, 2025) (“Underrepresented Minority (URM) status is based on the federal race code as self-reported by the student. URM status is indicated by a value corresponding to any one of the following four race/ethnicities: American Indian/Alaska Native; Black/African American; Hispanic; or two or more races. Thus, non-URM includes the remaining five categories: White, Asian, Native Hawaiian/Pacific Islander, non-resident alien, and unknown race/ethnicity.”).

<sup>21</sup> *Black Men in Medicine*, DUKE UNIVERSITY SCHOOL OF MEDICINE, available at: <https://medschool.duke.edu/about-us/faculty-resources/faculty-development/underrepresented-faculty-development/black-men#:~:text=The%20Black%20Men%20in%20Medicine,of%20black%20men%20in%20medicine.> (last visited Feb. 20, 2025).

<sup>22</sup> *Id.*

<sup>23</sup> *Complaint Linked to Black Men in Medicine*, UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS (May 23, 2023), available at: <https://donoharmmedicine.org/wp-content/uploads/2023/05/Duke-Black-Men-in-Medicine-OCR-investigation.pdf>.

Pipeline” (“EDI Pipeline”).<sup>24</sup> Duke School of Medicine touts that it “continues to make [pipeline] investments to demonstrate our commitment to diversity and inclusion,” offering “research opportunities for URM and women trainees” and partnerships with minority-serving institutions.<sup>25</sup>

One DUHS EDI program is the Summer Biomedical Sciences Institute (“SBSI”), a free, six-week summer intensive for pre-medical college students. According to DUHS, SBSI “targets talented...students who are disadvantaged, from underserved communities, are underrepresented minorit[ies], or interested in the health of the underserved.”<sup>26</sup> By design, this program fast-tracks minority undergraduates into medicine, providing them with specialized preparation and direct pipeline access to Duke’s School of Medicine and other programs. Duke boasts that over 16 years, many SBSI participants matriculated into Duke’s own medical school and residency programs. Similarly, Duke’s BOOST program (Building Overtures and Opportunities in Science and Technology) is focused on Durham public school students in grades 5–12, with an explicit mission of serving “students from underrepresented communities including African American, Latinx, and Indigenous students.”<sup>27</sup> These pipeline programs, by segregating opportunities on racial lines, function as a feeder system favoring certain races for future admission and employment at Duke – directly contravening Title VI.

Beyond formal programs, Duke School of Medicine sponsors minority-only recruitment and enrichment activities as part of its equity agenda. The Department of Medicine’s Minority Recruitment and Retention Committee (“MRRC”) “is a resource for medical students, trainees,<sup>28</sup> and faculty from under-represented racial and ethnic groups.”<sup>29</sup> The MRRC also sponsors an annual, endowed lecture, as well as other professional development opportunities, expressly for minority faculty and trainees.<sup>30</sup> Meanwhile, Duke School of Medicine’s “Multicultural Resource

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<sup>24</sup> *EDI Pipeline Programs*, DUKE UNIVERSITY SCHOOL OF MEDICINE, <https://medschool.duke.edu/edi-pipeline-programs> (last visited Feb. 20, 2025).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Welcome to BOOST! Celebrating 20 Years of Excellence*, DUKE, available at: <https://sites.duke.edu/boost/> (last visited Feb. 20, 2025).

<sup>28</sup> “Trainee” refers to a healthcare professional who is currently undergoing training to become a fully licensed doctor, typically after completing medical school. See *Mayo Clinic School Graduate Medical Education Trainee (Resident and Fellow) Job Description*, Mayo Clinic School (March, 25, 2019), available at: <https://college.mayo.edu/media/mccms/content-assets/academics/residencies-and-fellowships/admissions-and-benefits/MCSGME-Trainee-Job-Description.pdf>.

<sup>29</sup> *Minority Recruitment and Development*, DUKE UNIVERSITY SCHOOL OF MEDICINE, available at: <https://medicine.duke.edu/about-department/diversity-equity-and-inclusion/minority-recruitment-and-retention> (last visited Feb. 20, 2025).

<sup>30</sup> *Id.*

Center” provides targeted support to “pre-college and pre-medical students who are underrepresented in the health professions or who are disadvantaged.”<sup>31</sup>

DUHS’s pipeline and enrichment efforts are systematically built around race, operating as a closed loop to advantage preferred racial groups from as early as 5<sup>th</sup> grade, and carry them through to Duke’s professional ranks.

#### **D. Curriculum and Training with Racially Stereotyping Content**

DUHS’s healthcare curriculum and training programs promote pernicious racial stereotypes under the guise of “anti-racism.” The School of Medicine has endorsed content that explicitly stigmatizes individuals based on race, fostering a hostile educational environment.

Mandatory employee training materials label white male staff as inherent “agents of oppression” who are “privileged by birth,” while characterizing all non-white individuals as “targets” of discrimination.<sup>32</sup>

An official Duke Medical School guide on “dismantling racism” claims that professional norms like punctuality, individualism, and adherence to a rigorous work ethic are traits of “White supremacy culture.”<sup>33</sup> The document—signed by Mary Klotman, Dean of Duke University School of Medicine and Vice Chancellor for Health Affairs of Duke University, claims that “White” values are oppressive. All part of Duke’s “plan for dismantling racism and advancing equity, diversity, and inclusion,” the document goes on to say that White people suffer from “White fragility,” defined as “feelings of discomfort a White person experiences when they witness or engage in discussions around racial inequality and injustice.”<sup>34</sup> But this “guide” is not merely of academic interest nor is it a philosophical musing on race. In Dean Klotman’s words, it is a “guide for action,” the goals of which are meant to be supported by all.<sup>35</sup>

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<sup>31</sup> *Multicultural Resource Center*, DUKE UNIVERSITY SCHOOL OF MEDICINE, available at: <https://medschool.duke.edu/education/health-professions-education-programs/multicultural-resource-center> (last visited Feb 20, 2025).

<sup>32</sup> Mike Markham, *Duke Health Injecting Race into are, Firing Doctors Who Object*, THE CAROLINA JOURNAL (Aug. 22, 2024), available at: <https://www.carolinajournal.com/opinion/duke-health-injecting-race-into-care-firing-doctors-who-object/>.

<sup>33</sup> Hannah Grossman and Maria Lencki, *Duke Medical School Claims ‘Timeliness,’ ‘Individualism,’ is Part of ‘White Supremacy Culture,’* FOX NEWS (July 9, 2024), available at: <https://www.foxnews.com/media/duke-medical-school-claims-timeliness-individualism-part-white-supremacy-culture>.

<sup>34</sup> *Id.*

<sup>35</sup> Mary Klotman, *Dismantling Racism and Advancing Equity, Diversity, and Inclusion in the School of Medicine*, DUKE UNIVERSITY SCHOOL OF MEDICINE (June 2021), available at: [https://medschool.duke.edu/sites/default/files/2021-08/dismantling\\_racism\\_and\\_advancing\\_equity\\_diversity\\_and\\_inclusion\\_ADA.pdf](https://medschool.duke.edu/sites/default/files/2021-08/dismantling_racism_and_advancing_equity_diversity_and_inclusion_ADA.pdf).

### III. Duke University Health System Retaliated Against Faculty for Voicing Concerns About DEI Practices.

DUHS has a long-standing pattern of institutional bias, a hostile work environment, and retaliatory actions against individuals who challenge its race-based and politically motivated policies. Numerous instances have been documented where faculty, staff, and students have faced discrimination, harassment, and exclusion based on their race, ethnicity, religious beliefs, political views, and opposition to institutional policies. Title VI makes clear that “No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual . . . because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.”<sup>36</sup>

Dr. Kendall Conger, an emergency medicine physician, was systematically retaliated against before ultimately losing his job. Dr. Conger’s case demonstrates not only the presence of unlawful bias at DUHS but also a troubling pattern of retaliation against those who speak out against such bias.

Dr. Conger had been a respected Duke physician for 12 years with an unblemished record.<sup>37</sup> In 2021, when DUHS rolled out its “Duke Health Stands Against Racism” pledge and related initiatives, Dr. Conger grew concerned that DUHS was overstating the presence of racism in medicine and enacting policies that lacked scientific support, risking the injection of political ideology into patient care. The pledge’s claim that “racism is a public health crisis” and DUHS’s assertion that it would be “guided by science” in pursuing equity prompted Dr. Conger to request evidence and clarification.<sup>38</sup> He and many of his colleagues doubted the premise that minority patients received sub-optimal care due to institutional racism, especially absent supporting data.

Dr. Conger politely but persistently asked his supervisors and DUHS officials to provide scientific or clinical evidence supporting the pledge’s claims. He wrote emails and letters to DUHS leadership, including the DUHS hospital president, expressing his concern that the policies were driven by sociopolitical pressure rather than scientific data.<sup>39</sup> DUHS ignored him. At one point, a senior DUHS official privately admitted to Dr. Conger that they could not find a clinical trial proving that implicit bias causes worse healthcare outcomes for African Americans, despite

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<sup>36</sup> Title VI -- 34 CFR 100.7(e).

<sup>37</sup> Brianna Kraemer, *Doctor Fired from Duke for Resisting EI Agenda says Majority of Colleagues Agree*, THE CAROLINA JOURNAL (July 23, 2024), available at: <https://www.carolinajournal.com/doctor-fired-from-duke-for-resisting-dei-agenda-says-majority-of-colleagues-agree/#:~:text=Conger%2C%20whose%20been%20a%20doctor,but%20they%20wouldn't%20speak%20up>.

<sup>38</sup> *Id.*

<sup>39</sup> Mike Markham, *Duke Health Injecting Race into care, Firing Doctors Who Object*, THE CAROLINA JOURNAL (Aug. 22, 2024), available at: <https://www.carolinajournal.com/opinion/duke-health-injecting-race-into-care-firing-doctors-who-object/>.



looking for such a trial.<sup>40</sup> This admission validated Dr. Conger’s skepticism, yet DUHS did not reconsider its pledge.

Dr. Conger also objected to treating patients or staff differently based on their race. He made clear to his superiors that he believed in treating patients as individuals, not as representatives of racial groups, and that the focus should remain on equal care for all. He questioned DUHS’s prioritization on patients’ group identity, rather than viewing patients as individuals requiring care.<sup>41</sup>

Dr. Conger eventually voiced his concerns publicly, after the lack of response internally. In May 2023, he authored an op-ed describing “Duke Health’s Antiracist Pledge” as not guided by hard science and cautioning that DEI mandates were overriding medical merit.<sup>42</sup> In that article, Dr. Conger contrasted equality (equal opportunity) with equity (enforced equal outcomes), arguing that DUHS’s pursuit of the latter was not supported by evidence and could undermine quality of care.

Rather than engage with Dr. Conger or address the issues he raised, DUHS responded by terminating Dr. Conger’s employment. In early 2024, shortly after the publication of his op-ed and continuing internal advocacy, Dr. Conger was notified that his contract would not be renewed.<sup>43</sup> DUHS provided no performance-based reason for this termination. In fact, in a letter to Dr. Conger, DUHS management stated only that “[w]e believe your behavior is negatively impacting the emergency physician team, which could jeopardize the care of patients. Given this, we are choosing not to renew your contract for employment.”<sup>44</sup> This vague explanation references no misconduct or deficiency in Dr. Conger’s medical care; rather, it suggests that because Dr. Conger spoke up about DUHS’s race-related policies, he was deemed a problem for team cohesion. Notably, DUHS did not cite any concrete incident of wrongdoing, nor any violation of hospital policy or patient care standards. Indeed, by all accounts Dr. Conger was a skilled physician who treated all patients equally well. The only plausible interpretation is that DUHS found his persistent questioning of the “anti-racism” agenda to be unwelcome, and that his ideological dissent was deemed disruptive.

DUHS’s termination of Dr. Conger sends a clear message to all other employees: if you challenge our race-focused policies, you will be punished. This not only harmed Dr. Conger, ending his long

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<sup>40</sup> Mike Markham, *Duke Health Injecting Race into Care, Firing Doctors Who Object*, THE CAROLINA JOURNAL (Aug. 22, 2024), available at: <https://www.carolinajournal.com/opinion/duke-health-injecting-race-into-care-firing-doctors-who-object/>.

<sup>41</sup> *Id.*

<sup>42</sup> Kendall Conger, *Duke Health’s Antiracist “Pledge” is Not Guided by Science*, THE JAMES G. MARTIN CENTER (May 8, 2023), available at: <https://jamesgmartin.center/2023/05/duke-healths-antiracist-pledge-is-not-guided-by-science/>.

<sup>43</sup> Brianna Kraemer, *Doctor Fired from Duke for Resisting EI Agenda says Majority of Colleagues Agree*, THE CAROLINA JOURNAL (July 23, 2024), available at: <https://www.carolinajournal.com/doctor-fired-from-duke-for-resisting-dei-agenda-says-majority-of-colleagues-agree/#:~:text=Conger%2C%20whose%20been%20a%20doctor,but%20they%20wouldn't%20speak%20up.>

<sup>44</sup> Mike Markham, *Duke Health Injecting Race into Care, Firing Doctors Who Object*, THE CAROLINA JOURNAL (Aug. 22, 2024), available at: <https://www.carolinajournal.com/opinion/duke-health-injecting-race-into-care-firing-doctors-who-object/>.

career at DUHS, but also instills fear in other staff who might otherwise come forward with concerns about DUHS policies.

#### IV. Conclusion

DUHS's policy of favoring certain races over others undermines the very principles of equal opportunity that are foundational to federal civil rights law. It is both morally wrong and legally impermissible. That DUHS may couch these policies through sleights of hand and benignly named programs does not make them lawful. "[W]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows," and the prohibition against racial discrimination is "levelled at the thing, not the name."<sup>45</sup> As outlined above, these policies violate Title VI, as well as the clear directives set forth by *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll* that educational institutions must not make distinctions on the basis of race.

For the foregoing reasons, DUHS's discriminatory focus on race for admissions and the hostile environment that exists for disfavored demographics violates Title VI. Accordingly, we ask that you open a formal investigation into DUHS under Title VI. This investigation should examine all facets of DUHS's admissions processes, financial aid decisions, pipeline programs, training curricula, and any other relevant practices to determine the extent of race-based differentiation.

Sincerely,



Kristina Rasmussen  
Executive Director  
Do No Harm

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<sup>45</sup>*Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 230-31 (2023) (quoting *Cummings v. Missouri*, 4 Wall. 277, 325 (1867)).