



March 1, 2022

Dear Chair Franklin and Members of the MPHD Board of Health:

I write in response to Dr. Stephanie Kang's letter to Chairman Franklin and Vice Chair Smith dated February 9, 2022. My initial reaction to Dr. Kang's letter was to turn the other cheek and continue the work of overseeing a small team of dedicated HR professionals who have been providing superior human resource services to the employees of the Health Department. However, because I and my team have been attacked by false, misleading and in some instances libelous accusations, I feel compelled to provide you with HR's response.

1. Response to "Life ain't fair and the world is mean." Attached to this letter and marked as Exhibit 1 is a copy of the email exchanges between the HR Manager and an MPHD employee. The exchange is a combination of a meaningful discussion of policy related to how changes to employee job descriptions are administered as well as both employees' use of sarcasm. The HR Manager allowed the employee's sarcasm and attitude in both the attached emails and in-person meetings to influence his last response. The HR Manager apologized to the employee for the unnecessary use of sarcasm within a few days of this email exchange.
2. Response to the "pronouns" and "Ms." allegations, top of pp. 2 of Dr. Kang's letter. The allegations in this paragraph are false, libelous, and made with the intent to mislead in violation of MPHD Civil Service Rule 6.5B 15. The HR investigators never "disparaged" the employee's use of "they" during the employee's investigatory interview. The investigator attempted to explain to the employee/witness that for purposes of writing a report following an inquiry, the authors of the report had to be careful when using plural pronouns to describe what a singular witness had reported. The HR investigator informed the employee/witness that if a report referred to a singular witness as "they" when describing evidence obtained from one person, a person reading that report might become confused about how many people were providing the evidence. At no time did the investigator say anything negative or disparaging about an employee's choice of pronouns.

The second false allegation in this paragraph concerns HR's reaction to the same employee's complaint about being referred to as "Ms." in the resulting Report. The response the employee received was NOT limited to an email from "Finance" as Dr. Kang falsely represents. The response the employee received was HR's issuance of a "Corrected" Report which apologized for several pronoun errors and deleted the use of "Ms."

The Corrected Report referred to the employee by their name. A copy of the first page of the Corrected Report issued to the employee is attached to this letter and marked as Exhibit 2. Dr. Kang failed to conduct an elementary inquiry into this issue.

2. Response to the “period” allegations in Dr. Kang’s letter. The truth concerning the interview with the employee/witness is far removed from the false and misleading statements contained in Dr. Kang’s letter. HR was investigating an allegation that a male supervisor had asked a female employee if she was having her period. Following ordinary protocol, an HR investigator would ask questions about context:

“When was the statement made? Where was the statement made? Were any other employees present when the statement was made? What, if anything did you say to the accused employee prior to the moment the accused employee asked the question? What if anything did you say after the accused employee asked the question? Why do you think the accused employee asked the question? Had there been any kind of unpleasant exchange between you and the accused employee before he asked the question?”

How the above commonly asked questions are phrased when asked varies from case to case and witness to witness. The employee/witness on this issue had never personally complained to anyone about the incident, telling investigators that it had occurred approximately one year before the August 2021 investigation began. The employee was not surprised by the investigators’ advance knowledge of the “period” question, nor was the employee disturbed by the investigator’s description of a “recovering sexist male” when responding to the question about “why” a co-worker may have asked such an inappropriate question in the workplace. The employee/witness responded that “archaically, that’s something historically men will say if they feel they can’t understand why a woman might be responding to a certain circumstance.” At NO TIME was the witness badgered, and no questions were asked by the investigators that suggested the employee may have been at fault for the inappropriate behavior of a co-worker. The entirety of MPHD HR’s investigation into this issue was reviewed by Metro HR which found no fault with the investigators’ methods.

The employee was provided with a copy of the Report issued by HR and upon reading it the employee alerted HR to an error. Once again, Dr. Kang falsely represents that the only response the employee received after reporting the error was an email from “Finance.” In fact, HR issued a Second Corrected Report which corrected and apologized for the error the employee discovered. A copy of the first page of the Second Corrected Report is attached and marked as Exhibit 3.

Asking a person about these kinds of issues in the employment setting is difficult and stressful for everyone concerned. Some questions are hard to ask and even harder to answer. However, failing to obtain all relevant evidence in such an inquiry could lead to liability for the Department should litigation follow.

3. Response to Dr. Kang’s allegation of “Inconsistencies with the Grievance Procedure Policy,” (two paragraphs, bottom pp. 2). Dr. Kang’s statements could again be described as false and misleading. However, to give her the benefit of the doubt, HR will simply

point out that the employee complaints referred to in her February 9 letter were not processed as grievances because they were complaints alleging discrimination or other possible violations of EEO law. Civil Service Rule 6.7 (attached as Exhibit 4) contains the following language which controls how HR processed the complaints Dr. Kang mistakenly suggests were “grievances.”

Complaints alleging discrimination or other violations of applicable EEO laws must be filed as discrimination complaints and will be processed in accordance with the Discrimination Guidelines Policy and Complaint Procedures. (MPHD CSR 6.7C, at pp. 49, Emphasis added).

Next, Dr. Kang contends that the decision about what is and is not a grievance is “arbitrary” and “without transparency.” There is nothing arbitrary about how to process an employee’s complaint of being harassed or discriminated against in the workplace. The process is dictated by federal law and regulations, and both are followed by the dedicated team of HR employees working for this Department.

When an employee complains of discrimination to a supervisor or to HR directly, HR is required by federal law to take “prompt and remedial” action. MPHD HR has followed the law in each instance referred to in Dr. Kang’s letter. If she would have made an inquiry to HR regarding ANY of the issues under consideration, she would have been far better informed. Dr. Kang did not ask MPHD HR for ANY information concerning these issues.

When they begin their employment or as shortly thereafter as is practical, every new MPHD employee is made aware of their right to complain if they believe they have been harassed or discriminated against. Dr. Kang was informed of this when she attended MPHD’s “New Employee Orientation” on August 18, 2021, which included training concerning EEO issues as well as MPHD’s Civil Service Rules. Dr. Kang knows or should know the content of the Civil Service Rules because, like all new employees, she signed an “Acknowledgement” of having received access to the Rules on July 26, 2021. (Copy of Kang Acknowledgement attached and marked as Exhibit 5).

Dr. Kang was aware before February 9, 2022, that HR had a process for promptly investigating an employee complaint. She learned through her own interaction with HR that if it was determined that an employee had engaged in inappropriate behavior in violation of the law or the MPHD Civil Service Rules, remedial action would be taken. The process is vividly transparent. Dr. Kang knows that HR keeps an employee informed of the progress of the inquiry. Dr. Kang knew in December of 2021 that when an investigation is finished, both the complainant and the accused are promptly provided a copy of the investigators’ report.

Dr. Kang contends that MPHD employees have no notice of their right to appeal. HR directs the Board’s attention to Civil Service Rule 2.1 marked as Exhibit 6 and attached. Our employees know they have a right to appeal. The same Rule makes it clear that MPHD employees have a federally protected right to opt out of our “Discrimination Complaint Procedure” and take their complaint directly to a state or federal EEO agency. Dr. Kang’s allegation regarding “transparency” is incorrect.

Perhaps most telling about Dr. Kang's complaint against MPHD HR is the undisputable fact that Dr. Kang could have easily learned a great deal about the Civil Service Rules and the process HR employed when it responded to the employee complaints described in her letter if she had ever asked us. She never has.

4. Response to Dr. Kang's "Undetermined" Complaints allegation, top of pp. 3. Dr. Kang's allegation that "There is a record of HR investigators failing to interview employees that (sic) were present for incidents described in complaints" is false, libelous, and made with the intent to mislead in violation of MPHD Civil Service Rule 6.5B 15. In a recent investigation, HR interviewed every employee who was identified by the complainant and the accused employee as being persons who purportedly had knowledge of the incidents involved in the original complaint. HR also interviewed employees who were identified by a fellow witness. After interviewing approximately half of the entire program roster, HR determined that there was sufficient information in hand to conclude the investigation and prepare a report.

After the final report was issued to the involved parties, ONE employee (not multiple "employees" as Dr. Kang alleges) from the same program contacted HR and asserted that they had witnessed one of the incidents involving the accused employee. HR determined that the assertion was incorrect. Timekeeping records revealed that the two employees had not worked together on the date in question. Nevertheless, HR interviewed the employee and obtained his assertion that he had heard the accused make the remark. The overall information acquired on this issue did not amount to a preponderance of the evidence against the accused employee. HR found the issue to be "Undetermined." HR stands by the result. Dr. Kang's allegation on this issue is without basis in fact. There is no "record" of HR failing to interview witnesses.

5. Responses to Dr. Kang's two allegations that "Supervisors and leadership have often failed to provide resources and support to address employee complaints," middle of pp. 3. Dr. Kang's headline has little connection to the story that follows. She provides no evidence of a failure and therefore no evidence of the failure happening "often." In fact, every employee who complains of discrimination, (and fortunately there have not been many), is informed of their rights and responsibilities under the law and the MPHD Civil Service Rules. In addition, complainants and those who are accused are offered the benefit of the Metro/MPHD Employee Assistance Program.

Dr. Kang's allegation of another lack of transparency suggests that co-workers should be told of the details of the remedial action an employer has taken against an employee who is found to have engaged in inappropriate conduct. The law does not require it and HR best practices for years have adhered to the notion that the employer should not disclose

details of the corrective action or discipline taken against an employee. If litigation ensues, an employer must be able to establish that the action taken was commensurate with the offense and remedial, i.e., sufficient to stop the inappropriate behavior. That is all the law requires. The details of the action taken are left to the employer's discretion.

6. Appendix: Response to "Note: The Appendix is not exhaustive of documented recent incidents of employee complaints or concerns at MPHD." This statement should be of great concern to the Board because of Dr. Kang's assertion that the Health Equity Bureau is aware of and has documented recent employee complaints. If any of these complaints are EEO complaints, or could be interpreted as EEO complaints, Dr. Kang has an obligation under federal law to report these matters to her supervisor, i.e., the Director of Health. The Director would in turn assign the complaints to MPHD HR for investigation, so the Department can demonstrate that "prompt and remedial" action has been taken. Failure to report these complaints as required by law and our Rules puts the Department at risk.

As the Board knows, MPHD is a Civil Service employer. Civil Service employers, through their designated oversight boards, adopt Civil Service Rules (CSR) to meet objectives like those described in MPHD CSR 1.1 A-E. These Rules become the human resources rules and policies that govern the employer-employee relationship. A cursory reading of MPHD CSR's will find multiple references to the responsibility of the Human Resources Manager and staff to administer the Rules, to maintain personnel folders, to interpret the Rules and to investigate employee complaints. In addition to the express requirements in the Rules which assign these responsibilities to MPHD HR, it has long been the practice of Civil Service employers to rely upon human resources professionals to provide training, guidance, and assistance to Civil Service supervisors and employees concerning the interpretation and effect of the Rules and Policies adopted by the Civil Service Board having oversight.

The Board of Health has yet to assign any of these Civil Service responsibilities to any other Bureau, division, or program at MPHD, including the Health Equity Bureau. The Bureau of Health Equity is not charged with investigating EEO matters and its employees were not hired to conduct any such investigations. In addition, Dr. Kang's Bureau has demonstrated by her February 9, 2022, letter that they are not prepared or competent to conduct an appropriate investigation into employee complaints. A central tenet of conducting a thorough investigation is that one must interview the person or persons accused of misconduct. As is now clearly established, no one from the Health Equity Bureau has asked HR to respond to any of Dr. Kang's meritless accusations.

7. Response to "Failure to Recognize Same-Sex Marriage, November 2021 (top pp. 5): The allegation in this paragraph is false, libelous, and made with the intent to mislead in violation of MPHD Civil Service Rule 6.5B 15. The HR presentation concerned the hiring process, including the extension of benefits to employees. The presentation noted

the history of the old and antiquated Employee Benefit System (EBS) including its apparent difficulty maintaining benefits for unmarried partners. The presenter stated that the old EBS system was designed for the “old fashioned marriage” of the past, whereas the new system known as R-12 has no difficulty processing benefits for partners who live in the full panoply of relationships. The only employee who complained of being “uncomfortable” with the presentation was an employee who had recently received a reprimand for inappropriate behavior in the workplace.

8. Response to “HR Investigation, November 2021 Issues,” (middle pp. 5). Dr. Kang provides no evidence to support her allegations on this subject. HR’s time-intensive inquiry established that the former Program Manager told HR during an interview that she had indeed addressed certain issues with the accused employee. In addition, HR’s interview with the accused employee confirmed he had been coached by the Program Manager concerning the same inappropriate behavior. Dr. Kang is again wrong on the facts – facts she could have obtained had she simply investigated before putting another false allegation into her February 9 letter.
9. Response to “HR Investigation, December 2021 Issues,” (Paragraph 4a, bottom pp. 5): Dr. Kang objects to the investigators’ decision not to discuss parts of her written complaint in a Report that resulted from a very thorough inquiry into an incident involving two members of the ELT. HR investigations always involve decisions concerning evidence that should or should not be included in a report. The investigators determined that discussing the names of an uninvolved employee and a member of the Board of Health was unnecessary and extraneous to the description of the issues that ultimately contributed to an unfortunate confrontation. It should be noted that Dr. Kang’s complaint, including the two paragraphs about which she complains, is public record and may be reviewed by any citizen who requests a copy.
10. Response to “HR Investigation, December 2021 Issues” (Paragraph 4b, top of pp. 6): Dr. Kang disagrees with the findings of a Report involving her own behavior. Many employees who are found to have said something inappropriate in the workplace disagree with an HR report that describes and finds fault with their behavior. Dr. Kang’s February 9 letter to the Board deliberately changes her version of what she actually said to her co-worker from “Well, it’s not always easy to talk to a **white man** in leadership about race issues,” to “Well, it’s not always easy to talk about race issues with **white men** in leadership.” Page 2 of Dr. Kang’s Complaint is attached and marked as Exhibit 7 so the Board may take notice of this subtle tactic. While the language differences may appear insignificant, they are anything but. In fact, Dr. Kang was quoted as having said “**white man in power**” during the meeting in her colleague’s office when she recounted the confrontation to another witness just minutes after its conclusion.

HR determined that Dr. Kang's remark demonstrated that she was pre-judging her colleague's receptiveness to having a conversation about race issues because of his race and gender. Discussing race can be difficult for many people regardless of their race and gender. However, telling a co-worker whom you barely know that MPHD employees would have trouble discussing race with them because of their race and gender was, and is, both rude and inappropriate.

11. Response to "HR Investigation, December 2021 Issues" Paragraph 4c pp. 6:: Dr. Kang misstates the information that she originally presented to the HR investigators by stating that "an object" was "thrown near" her. Dr. Kang's original complaint (See, Exhibit 7, attached) stated that her co-worker flung a leather folder onto his desk, and that when the folder hit the desk it made a loud noise. In both her written complaint and during her interview with investigators, Dr. Kang made no mention of the object being thrown near her person. She told investigators that the notebook "just landed" on her colleague's desk.

I hope that this letter and attachments provide a more thorough and fact-based representation of how MPHD HR addressed the issues discussed in Dr. Kang's letter. My team and I hope that we can move forward and continue to provide excellent customer service to our employees.

We welcome productive, informed feedback, and are willing to have further conversations with any member of the Board of Health concerning the issues raised in Dr. Kang's letter. We are happy to provide clarification on MPHD Civil Service Rules, Policies and Protocols to any interested Board member or any MPHD employee. Our expectation is that fact-based and transparent conversations with the Board will instill confidence in the work MPHD HR has done and continues to do.

Rest assured that MPHD HR will continue to make every possible effort to create a healthy work environment for all MPHD employees. All of us at MPHD need your full confidence and support to do our best.

Thanking you for your service to our community and for your time reviewing this letter and its attachments, I am

Sincerely,



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