

*“My Posts Do Not Necessarily Represent Those with Whom I am
Affiliated. Obvious, Right?”*

Dr. Tara Gustilo vs. Hennepin Healthcare System: Free Speech as a Public Employee

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Abstract: Obstetrician-gynecologist Dr. Tara Gustilo led her department at Hennepin Healthcare System (HHS) for five years. Like many Americans in 2020, she engaged in the civic dialogue on police brutality and racial discrimination that seized the Internet after George Floyd’s murder. In her case, however, posting on Facebook sparked a series of charged conversations and department-wide frustrations. For HHS leaders, Gustilo’s reputation as a stellar physician and leader conflicted with the organization’s interest in protecting a non-hostile working environment. The hospital leadership faced a dilemma: should HHS honor employee requests to remove Gustilo as Department Chair or protect the lead’s position considering her impressive achievements during her tenure? This case highlights the complexities of protecting workplace integrity without infringing on free speech rights.

Introduction

Women and people of color continue to protest their underrepresentation in leadership positions in medicine, reporting multiple barriers in their ascent to department chair positions. In July 2021, Dr. Tara Gustilo, a woman of Filipino descent, worked with the Foundation Against Intolerance & Racism (FAIR) to release a video documenting her involuntary removal from her department chair position in a Minnesota hospital. Citing her unpopular political beliefs as the reason for her demotion, Gustilo denounced Hennepin Healthcare System (HHS), her employer, for its evaluation of her leadership ability based on her political views (Foundation Against Intolerance & Racism 2021; hereafter FAIR).

Dr. Tara Gustilo formally assumed her position as Chair of the Obstetrics and Gynecology (OBGYN) Department in 2019, after serving as Interim Chair for four years (Gustilo 2022).¹ The organization consistently recognized Gustilo’s leadership qualities and performance as a medical provider by electing her to positions on leadership committees, including the HHS Board of Directors and Medical Executive Committee (Freeman 2022).² Gustilo’s tenure as Chair reflected the same qualities for which HHS lauded her. She led her department to raise performance and patient satisfaction scores and spearheaded initiatives to improve patient care.

Amidst the resurgence of nationwide attention to police brutality against Black victims in 2020, Gustilo began to share her opinions on the matter on her personal Facebook page and within her department. She argued against critical race theory, reasoning that it fosters discrimination in

¹ All information about Gustilo’s professional background, speech and experience at HHS is sourced in this document unless otherwise cited.

² All views and actions of Hennepin Healthcare System hereafter are sourced in this document unless otherwise stated.

efforts to achieve equality. She similarly criticized the Black Lives Matter movement and disapproved of the OBGYN department's public support for the movement. In response to her social media activity, two of her superiors, Dr. Daniel Hoody and Dr. David Hilden, requested that she clarify her views as unreflective of HHS values.

By October 2020, HHS Human Resources was reviewing Gustilo's performance. The review yielded reports that her department members were afraid of her and found her beliefs racist. Soon, the review became an internal investigation and human resources consulted OBGYN department members for feedback. With its release on January 5, 2021, the Investigation Summary surfaced claims of Gustilo's tardiness or failure to attend scheduled meetings, unresponsiveness to emails and calls, unwillingness to hear others' opinions, and loss of department trust. Only a day later, Hoody and Human Resources Manager, Jennifer Hauff, suggested that Gustilo voluntarily step down as Chair but continue as a care provider in the OBGYN department. Gustilo refused.

On January 22, 2021, HHS placed Gustilo on paid administrative leave. Soon after, nearly all her subordinates wrote a letter to Gustilo and HHS leadership expressing a lack of confidence in her leadership. Cornered with employee feedback, HHS leadership felt obligated to initiate the formal process of removing Gustilo from her position. Effective April 28, 2021, the HHS board terminated Gustilo's role as Chair of the OBGYN Department at HHS. To Gustilo's confusion, this decision stood despite HHS' prior endorsement of her qualification to lead in the hospital.

Shortly after, Gustilo met with the hospital's Chief Medical Officer to discuss the implications of the decision. There, she learned of her forthcoming salary reduction and diminished scope of duties. She faced a 30% pay deduction (over \$150,000) and a new team dynamic, working alongside her coworkers who had requested her removal from the Department Chair. Gustilo faced a decision between three options: she could leave the hospital, continue work as a doctor at HHS without promotional prospects, or initiate a lawsuit against HHS for free speech infringement or race discrimination.

Dr. Tara Gustilo and Hennepin Healthcare System

Dr. Tara Gustilo, of Filipino descent, is a board-certified obstetrician-gynecologist with nearly 30 years of clinical experience. Gustilo earned her undergraduate degree at Harvard-Radcliffe College, now known as Harvard University. She later attained medical education at Mayo Medical School and completed her residency in Obstetrics and Gynecology at Duke University Medical Center. After residency, Gustilo worked for several years: first at the Navajo reservation in Chinle, Arizona and then at the Cleveland Clinic in Ohio. By January 2008, when she joined HHS, Gustilo had profound experience working with diverse patient populations (Gustilo 2022).

HHS is a public corporation and safety-net system of medical centers in Minnesota. Hennepin County Medical Center (HCMC), the hospital where Gustilo primarily worked, is one of the 10 clinics in the HHS network. Originally founded in 1887, the hospital was a department of Hennepin County for over a century. In January 2007, HHS became an independent employer and created its own governing board and human resources system. HCMC later rebranded itself as Hennepin Healthcare in 2018, but the hospital still recognizes its established abbreviation, HCMC, as its name (Hennepin Healthcare n.d.; Freeman 2022).

Race, Gender, and Leadership in Medicine

Women and ethnic minorities are historically underrepresented in leadership positions in the workforce, and to date, they have less access to high-level positions compared to their counterparts (Hines 2019). A recent study found that, despite having identical resumes, applicants

with non-English names were 57.4% less likely to receive a favorable response on their application for a leadership position than those with English names (Adamovic and Leibbrandt 2023). Similarly, another study documented an implicit bias toward associations between leadership qualities and white individuals, in comparison to non-white counterparts (Gündemir et al. 2014). The significant difference between the outcomes of the two groups reveals the rampant nature of ethnic discrimination in the hiring process.

The U.S. corporate workforce's reputation for poor leadership diversity makes it unsurprising that women and people of color (POC) are underrepresented in both the medical field and leadership positions. Scholars recognize that diversity in medical leadership facilitates more innovative and inclusive company decisions and, importantly, contributes to reducing health inequities (Herrin et al. 2018; Joseph et al. 2021). Yet, while women have accounted for over 50% of medical school applicants and matriculants since 2018, only 23% of U.S. medical school department chairs were women in 2022 (Association of American Medical Colleges 2018; 2022; hereafter AAMC). The data on POC shows a similar discrepancy between medical trainees and current leadership in medicine. By 2018, racial and ethnic minorities were approximately 40% of medical school applicants and matriculants but only 18% of medical school department chairs identified as POC in 2022 (AAMC 2018; 2022).

Although the isolated statistics on women and POC show the lack of diversity in higher-level positions in medicine, these figures fail to properly depict women of color's underrepresentation. Because of their intersectional identities, women of color face a "double glazed glass ceiling" (Meeting of Minds 2020, n.p.). This group's compounding barriers explain why women of color represent 5% of medical school department chair positions (AAMC 2022). The scale of these barriers is dependent on the attitudes towards diversity within a specialty—or more so, a hospital. OBGYN, for example, remains subpar regarding women's advancement to departmental leadership positions in comparison to other medical specialties, despite its focus on female reproductive health (Hofler et al. 2016). So, Gustilo defied the odds by ascending to Chair of the HHS OBGYN Department.

“Descriptive” and “Substantive” Leadership

Considering the inconsistency that often exists between a leader's identity and that of their community, it is helpful to define the interplay between one's background and one's leadership. To explore this relationship, we must first define the terms “descriptive” and “substantive” in the context of leadership. Descriptive representation occurs when leaders reflect the demographic characteristics of the larger community that they lead. Such reflections may present as visible traits like skin color, or through personal background, such as one's level of educational attainment (Mansbridge 1999). For example, a female state official from Chicago represents other female Chicago residents, and a Black medical director represents Black physicians and patients. Here, shared identities potentially allow leaders a deeper understanding of the group's experiences, needs, and perspectives. In substantive leadership, the leader assumes the same interests as the community that they lead (Pitkin 1967). That is, a feminist organizes a group that fights gender inequality, and an anti-racist directs a group in their resistance against racial discrimination in the workplace. Shared interests motivate such leaders to advocate for the community's needs.

Scholars maintain that descriptive and substantive representation are linked for women and POC; descriptive leaders tend to share the interests of their community (Sobolewska, McKee, and Campbell 2018; Forman-Rabinovici and Sommer 2019). For example, the female state official from Chicago likely shares the community's concern for women's access to health services in the city. However, leaders do not always produce outcomes in the interest of their descriptive group

(Cowell-Meyers and Langbein 2009). A Black medical director who descriptively represents Black people in healthcare may opt against funding a program to improve Black childbirth experiences, despite the known high rates of maternal mortality among Black women (Green 2023). This reasoning extends to other social categories such as race, gender, and class. The reality that POC are not a monolith and, in fact, have diverse political opinions is critical to the present case. Hence, Gustilo's views and actions may not reflect those of other women or people of Filipino descent.

Free Speech as a Public Employee

The First Amendment to the United States Constitution protects individuals' freedom to express their opinions without government retaliation (U.S. Const. I). If the individual is a government employee, however, the application of free speech laws loses its universality. Notably, public employees originally had no free speech rights while on duty (Hudson 2021). Justice Oliver Wendell Holmes, notably influential on free speech Court decisions in the early to mid-1900s, succinctly explained public employees' rights at the time. Referring to John McAuliffe, a policeman who faced employment termination for belonging to a political committee, Holmes wrote, "The petitioner may have a constitutional right to talk politics, but he has no right to be a policeman" (*McAuliffe v. New Bedford* 1892, 220). This exclusivity implied that when an individual accepted employment at a public organization, they forfeited their rights to free speech (Hudson 2021). Retrospectively, such extensive censorship of employee speech is unreasonable, especially when because of one's status as a public—rather than private—employee.

In the 1960s, courts recognized that Holmes's argument about constitutionally protected speech was unfair to public employees, and the First Amendment began extending protection to public workers. In 1968, schoolteacher Marvin Pickering criticized his school board's financial decisions, and the Supreme Court declared that his speech "as a citizen [on] matter[s] of public concern" was constitutionally protected (Marcum and Perry 2014; *Pickering v. Board of Education* 1968, 391). Still, this deviation from the Holmes interpretation of the First Amendment remained conditional. The employee's speech remained unprotected if the employee spoke falsely or recklessly, disrupted workplace harmony, compromised their supervisor's authority, or severed the trust between employees (Miller 2011). The final condition presents the most relevance to Gustilo's case, suggesting that her speech is unprotected by Pickering standards.

In 1983, the U.S. Supreme Court referenced *Pickering v. Board of Education* while arguing the *Connick v. Myers* case. Despite Shelia Myers's strong opposition, her supervisor, District Attorney Harry Connick, transferred Myers to a different division of the criminal court, where she would continue to serve as an assistant district attorney. In response, Myers surveyed her coworkers for their opinion on the transfer policy and soon faced termination for undermining her supervisor (*Connick v. Myers* 1983, 138). To address the case at hand, the Supreme Court expanded on its *Pickering v. Board of Education* decision by defining "matters of public concern" as "any matter of political, social, or other concern to the community" (*Connick v. Myers* 1983, 146). Explaining that Myers's survey involved only issues within the workplace, the Court declared that her speech in this context was not constitutionally protected.

The court rulings on Pickering and Myers's speech introduced a two-part tool to determine the constitutionality status of an employee's speech: the Pickering-Connick Balancing Test (*Connick v. Myers* 1983). The first part of the test ascertains whether the speech in discussion is a topic of relevance to the larger community. Speech that fails to pass this threshold is not constitutionally protected, and the employer may enact discipline with no First Amendment repercussions. In cases where the speech holds public relevance, the court weighs the significance

of the speech against its possible impact on workplace operations (Hoppmann 1997). Simply put, the Pickering-Connick Balancing Test enables employees to enjoy their constitutional right to free speech, though only when speaking on public affairs or winning the value comparison against their employer's interests (*Connick v. Myers* 1983).

With the 2006 *Garcetti v. Ceballos* decision, the Supreme Court introduced a new threshold for public employee free speech cases. As the most recent seminal First Amendment free speech case, *Garcetti* informs decisions on employer-employee free speech issues today. As a deputy district attorney, Richard Ceballos criticized his office for inaccuracies in a search warrant affidavit that informed the prosecuting attorney's case. When his office disregarded his recommendation to dismiss the case, he recounted his concerns in his testimony for the defense attorney. Ceballos claimed that his employer then retaliated against him through task reassignments, a courthouse transfer, and denial of promotion (*Garcetti v. Ceballos* 2006). To address the present case, the Supreme Court referred to *Pickering v. Board of Education* and *Connick v. Myers*. Recognizing the uniqueness of Ceballos's speech from that of Pickering and Connick, the Court declared that if employee speech falls within job duties, it cannot be constitutionally protected. Here, the Court recognizes Ceballos's testimony as part of his professional assignments; therefore, it cannot extend First Amendment protections in this case. Ceballos was not exempt from any employer retaliation on the speech in question.

Although *Garcetti v. Ceballos* closed with Ceballos's loss, the seminal case provides an updated delineation of employees' freedoms within the public workplace. The Court recognized two principles: public employees are simultaneously public citizens and employer-employee disagreements will unavoidably occur in the workplace (Marcum and Perry 2014). To avoid infringing on employees' free speech, the Court now refrains from automatically deprotecting speech by virtue of its location in the workplace. Rather, the speech falls subject to the new threshold inquiry: the Pickering-Connick-Garcetti Balancing Test (Miller 2011). Like the Pickering-Connick test described above, this test's only distinguishing factor is its criteria for the employee's speech outside official duties, as informed by *Garcetti*. Pickering-Connick-Garcetti, the updated model, protects employee speech that is relevant to public concern, is more significant than employer's interests, and is not a professional responsibility.

Gustilo's Record at Hennepin

Two years after Gustilo joined HHS as a physician in the OBGYN department, she acquired her first leadership position at the organization. Her practice group appointed her as the Clinic Medical Director, providing her with the opportunity to contribute to decision-making at HCMC. Gustilo exercised her authority to increase expectations for continuity of care and designed initiatives to provide better care to the hospital's diverse patient population. At HHS, she continued to undertake several other leadership capacities including as a member of the HCMC Physician Leadership Development Committee and the HCMC Medical Executive Committee. Most notably, Gustilo was a member of the HHS Board of Directors for six years, influencing appointment and oversight of hospital leadership.

Gustilo's appointment to Interim Chair of the OBGYN Department in May 2015 was not surprising given her impressive leadership record. She decided to maintain her gynecology caseload but cease her obstetrics practice at HHS to direct her attention toward clinical care issues within the department. In August 2018, the medical center appointed her as the permanent Chair of the department, where she would oversee 14 physicians (HHS 2023a) (See Appendix A). During her tenure, her department's metrics showed top-ranking patient satisfaction rates and minimal visit cancellations during the COVID-19 pandemic compared to other HHS departments.

Gustilo’s reputation and trajectory began to change in 2020 amidst a social uprising against police brutality (Gustilo 2022; Freeman 2022; The New York Times 2022) (See Appendix B). According to her, the story of her demotion begins with George Floyd, a Black man, and Derek Chauvin, a white Minneapolis police officer, who knelt on Floyd’s neck for over nine minutes on May 25th (FAIR 2021; The New York Times 2022). Following this assault, HHS paramedics transported Floyd to HCMC’s emergency room, where he was pronounced dead. Floyd’s death rekindled widespread conversation on police brutality and racial bias against the Black community. Using data on city demographics and police forces, activists argued that Black Americans experienced a disproportionate amount of police brutality in the United States, particularly in Minneapolis (Oppel Jr. and Gamio 2020). Demonstrators organized protests in Minneapolis for several days, chanting Floyd’s last words, “I can’t breathe” (The New York Times 2020, n.p.). The police responded with tear gas and rubber bullets, and—in Minnesota Governor Tim Walz’s words—the city faced “absolute chaos” (The New York Times 2020, n.p.). State officials and police officers struggled to contain the situation when peaceful protests escalated, and people launched fireworks towards the police and set buildings aflame (The New York Times 2020).

In the wake of Floyd’s murder, Gustilo worked to educate herself on intersections between police brutality and race, Critical Race Theory (CRT),³ and the Black Lives Matter (BLM) movement. She concluded that CRT frames members of racial minority groups as “victim[s] of a rigged system” and people of non-minority groups as indisputably exploitative of racial minorities (Gustilo 2022, 5). Moreover, CRT asserts that people of color may experience “internalized whiteness”—the theory that POC believe racist propaganda promoting “whiteness” as the superior race (Gustilo 2022, 5). Her research led her to believe that CRT is a “race essentialist ideology” that presupposes a zero-sum racial conflict and consequently employs positive discrimination to make group outcomes more equal (Gustilo 2022, 4). She thus concluded that the reasoning behind CRT and the Black Lives Matter movement defy the concept of equality from the United States Constitution, Title VII, and the Minnesota Human Rights Act.

In July 2020, she wrote a letter to the hospital’s Chief Executive Officer and Board of Directors arguing against police defunding and warning of potential effects, like loss of life and property damage. She disagreed with the narrative of the police’s racial bias towards Black people, citing data from the Federal Bureau of Investigations that allegedly contradicted the widespread claims. Ultimately, she recommended that HHS organize open discussions among company staff on the available research. According to Gustilo, HHS did not pursue the latter proposal and, rather, continued to foster a discriminatory environment by “imposing its own views on race, consistent with those espoused in CRT” (Gustilo 2022, 6).

Gustilo’s opinion on racial matters was also unpopular within her department, as she learned after spearheading a diversity initiative in the OBGYN department that strayed from her intent. She had initially created the program to study different cultural birthing traditions relevant to their diverse patient population, but in its implementation, the program morphed into what she called “segregated care” (Gustilo 2022, 6). To her, exclusively assigning Black physicians to Black patients, for example, was discriminatory to non-Black patients and hypocritical of coworkers who claimed to fight racism (FAIR 2021). Gustilo made her views known to the department but received little support from her coworkers or upper management.

³ Critical Race Theory is a term that Kimberly Crenshaw coined in the 1989 to describe the theory that racial bias is ingrained in several parts of Western society, particularly in legal and social institutions. CRT argues that these systems primarily serve white people by design. See Crenshaw et al. (1995) for a detailed overview of the intellectual origins and key concepts of this movement.

The aftermath of Floyd’s murder only increased the divide between Gustilo and her subordinates. In efforts to communicate their solidarity with their patient base, the OBGYN Department collectively decided to issue a public letter. Members of the department wanted to express their support for their community’s “unrest.” Gustilo, however, believed her coworkers were endorsing violence and that the community’s actions were better defined as a “riot” (Eldred 2022, n.p.). She refused to sign the letter on behalf of the whole department, as there was disagreement about the language, but she encouraged department members to sign individually if they wished to do so. Gustilo’s encouragement of department members signing the letter individually if they liked suggests that she values freedom of speech. The department eventually agreed to compromise and exclude both “riot” and “unrest” as terms from the letter, and Gustilo signed the letter as the Department Chair. She addressed the matter in a department-wide email, apologizing for being “too forceful in her assertions” and acknowledging that she must continue to work on this behavior (Freeman 2022, 4). When department members later intended to show public support for a BLM event, she expressed opposition, citing HHS’s company policy against political group affiliation. However, her personal beliefs on the movement and CRT clearly informed her opposition because she argued that HHS should not subscribe to the “discriminatory environment created by CRT” (Gustilo 2022, 8).

Gustilo’s Beliefs Within HHS

In the summer of 2020, Gustilo began posting her views on the BLM movement and CRT to her personal Facebook page and debating with other online users. Gustilo’s social media presence raised concern within the hospital—especially because she had previously shared her status as the OBGYN Department Chair in Facebook posts about company fundraisers. The Chief Medical Officer, Dr. Daniel Hoody, and Vice President of Medical Affairs, Dr. David Hilden, confronted her and requested that Gustilo accompany her posts with a disclaimer, stating that her views were independent of those of HHS. In line with the Pickering-Connick-Garcetti definition of protected free speech, Hoody and Hilden recognized that Gustilo held a constitutional right to her speech on her personal social media; however, her social media posts must be clearly distinguished from her role as department chair. She responded by voluntarily removing posts from her page that confirmed her affiliation with HHS. As of present, Gustilo’s Facebook bio is “My posts do not necessarily represent those with whom I am affiliated. Obvious, right?” (2024). Because Facebook’s bio feature does not include timestamps, it is unclear when Gustilo made this statement. However, Gustilo shared in email communications with HHS leadership that she posted this bio in October 2020 after her initial meeting with Hoody and Hilden (HHS 2023a) (See Appendix C).

Nonetheless, Gustilo’s social media activity surprised and concerned some of her colleagues and friends. In late September and early October, at least four OBGYN doctors approached HHS superiors with complaints about Gustilo and her leadership (HHS 2023a) (See Appendix D). Uncomfortable with directing their concerns to Gustilo, the doctors primarily reported their worries to Hoody and Hilden. Generally, the doctors reported their Department Chair was bringing her political views into the workplace and “causing great discomfort among the staff” (Freeman 2022, 5). The doctors explained that Gustilo not only expressed her beliefs but also argued with her subordinates about why her opinions were correct.

In October 2020, Hoody and HHS Human Resources responded to the concerns by organizing a meeting with Gustilo to discuss her personal posts. They informed Gustilo that members of the OBGYN Department found her posts racist and the posts incited fear in her subordinates and coworkers. Hoody and Human Resources also expressed concern that her

Facebook activity impacted her “ability to lead” (Gustilo 2022, 9). According to Gustilo, HHS superiors did not provide her with any examples to justify their claims of her racist behavior or her attempt to impose her beliefs on others. Still, she addressed her colleagues’ concerns optimistically in a department-wide letter, explaining that she had removed the troubling Facebook posts and offering to discuss any further issues (HHS 2023c) (See Appendix E).

Gustilo followed up on the concerns by discussing them with a physician in her department, who hesitantly agreed to meet with her. Acknowledging that they did not share political views, the subordinate doctor insisted that their differences in political views were not the issue. Rather, the physician’s concern was that Gustilo’s posts came across as derogatory or even racist. Gustilo once again requested a supporting example, and the doctor responded by stating that one of Gustilo’s posts referred to COVID-19 as the “China virus” (Freeman 2022, 6) (HHS 2023a) (See Appendix F). To that, Gustilo spent 10 minutes explaining why this label was suitable. The subordinate physician later recounted this interaction to Hilden, highlighting that Gustilo failed to reconcile her negative impacts on the department.

To better understand the situation and restore peace to the OBGYN department, HHS contracted an independent human resources firm to conduct an internal investigation on Gustilo in November 2020. Sourcing information from email communications, interviews, and feedback from members of the department and HHS at large, the firm shared the results of its investigation in an Investigation Summary on January 5, 2021 (HHS 2023a).

The summary reported that Gustilo lacked the trust of her department members, was “chronically tardy” or absent from meetings, was often interruptive during conversations, and was not sufficiently involved in the department (Freeman 2022, 7). Echoing department doctors’ earlier concerns, the summary also included consistent reports of Gustilo’s unwillingness to accept views other than her own, causing doctors to fear retaliation for voicing disagreement with her. One interviewer commented that Gustilo “had the opportunity to create unity, but sowed division” (Freeman 2022, 8). The December 2020 Department Chair evaluation survey reinforced the OBGYN department’s negative perceptions of Gustilo, as the results reported poor ratings across all leadership skills listed (HHS 2023b). Such abysmal results, relative to Gustilo’s historically praiseworthy performance raised important questions. Had her work quality decreased drastically, or had her political views simply caused her colleagues to despise working with her? Could it be that Gustilo’s work conduct was acceptable and her colleagues were disgruntled solely due to her political affiliations?

In her defense against administrative concerns in the survey, Gustilo argued that her timely email correspondence and commendable client satisfaction survey results contradicted the investigation results. Notably, Gustilo did not comment on any criticisms of her interactions with her subordinates. Most unclear to her, however, was why her performance had remained unquestioned until she started sharing her political beliefs. This sudden critique of Gustilo’s leadership is what underpins an argument for HHS’ violation of Gustilo’s right to free speech as a public employee. After all, HHS had celebrated Gustilo’s contribution to the hospital, even featuring her on a billboard in downtown Minneapolis, prior to her social media posts (FAIR 2021).

While Gustilo remained confident in her leadership, her subordinates expressed that they could not see a future where Gustilo regained their trust—and felt she must exit her role as Chair. With comments like “there was no sustainable way forward for the department under her leadership,” many department physicians declared that they would leave HHS if Gustilo continued as Chair of the Department (Freeman 2022, 8). Given how Gustilo’s political speech in the

workplace and online disrupted the department's harmony, Hoody and Human Resources Manager Jennifer Hauff met with Gustilo on January 8, 2021, and they advised Gustilo to voluntarily step down from her position (See Appendix G). If she did, she would surrender her leadership responsibilities but continue as a physician within the department, perhaps increasing her patient load since she would have increased capacity. On January 15, 2021, Gustilo handed over a letter stating her refusal to leave her position (HHS 2023b) (See Appendix H). Further, she ascribed her employer's action to her superiors' disapproval of her political beliefs. HHS viewed her assumption as a lack of insight into the severe harm her posts inflicted, which spurred the motion to demote her.

Removing Gustilo as Chair

Later in the day on January 15th, HHS leadership set up a department-wide meeting but excluded Gustilo. Physicians were offered an opportunity to freely express their views on the Department Chair. Many physicians strongly criticized Gustilo's leadership; some even sobbed while doing so. Some reiterated that they would leave the organization if HHS did not remove her from her position. Most could not envision the restoration of the former relationship between Gustilo and her department. In sum, nobody argued for Gustilo to remain in her position as Chair.

Honoring the department's feedback, HHS placed Gustilo on paid administrative leave on January 22, 2021, pending a final decision by company leadership (HHS 2023b) (See Appendix I). She continued her duties as a care provider but could not perform any Chair-related work during this leave. Despite this, her compensation remained unchanged from when she served as Chair.

On March 8, 2021, as HHS reviewed the situation, 13 of the 14 OBGYN physicians sent a letter to Gustilo and copied HHS management. Recounting the several issues they saw during Gustilo's tenure, they moved a no-confidence motion against her leadership. They wrote, "We as a group, feel that recent changes in judgment, leadership, and relationship with your team...cannot possibly return to a place where they are in line with the institutional mission and a place where you could regain our trust" (HHS 2023a, 275) (See Appendix C). Consequently, HHS leadership concluded that their only course of action was to begin the formal process of demoting Gustilo from her position as OBGYN Chair.

According to HHS Medical Staff Bylaws, the process of removing a department chair must begin with a proposal to the Medical Executive Committee. Following the proposal, the Medical Executive Committee (MEC) makes a recommendation for or against the chair's demotion to the HHS Board. In this vote, a two-thirds majority is necessary to recommend demotion. The HHS Board then independently decides whether HHS should remove the department chair (HHS 2023a) (See Appendix J).

By mid-March 2021, the MEC notified Gustilo that it would deliberate her removal during its meeting on April 13, 2021. At the meeting, the committee considered materials from both Hilden and Gustilo, including a mid-tenure review of Gustilo's performance that Hilden presented. This document provided further evidence that while Gustilo self-reported that her leadership skills were stellar, her department members felt otherwise; the survey respondents awarded her "perhaps the lowest scores ever seen" in this survey for department chairs at HHS (Freeman 2022, 10). Considering all the information, the MEC voted 25 to 1 to demote Gustilo from her position. The single vote against removal was Gustilo's, and there was one abstention. On April 21, 2021, Hilden recommended Gustilo's demotion on behalf of the MEC (HHS 2023d) (See Appendix K).

At its meeting on April 28, 2021, the HHS Board accepted the MEC's recommendation and formally removed Gustilo as Chair of the OBGYN Department, effective the same day (HHS 2023d) (See Appendix L). Following her demotion, she met with Hoody to discuss her task

reassignments within the Department and her salary reduction. By organization policy, her removal from the Chair position had no bearing on her employment as a physician; she was to proceed as a doctor in the OBGYN Department that voted for her removal.

Conclusion

This case followed Dr. Tara Gustilo's experience at Hennepin Healthcare System after she expressed her views on ongoing social issues on social media and within her workplace. Although many United States residents exercised their free speech privileges in 2020, Gustilo's actions triggered a cascade that culminated in her demotion from OBGYN Department Chair. Gustilo's case raises several questions about free speech within the public workplace. How should public employers address an employee's disruptive workplace speech? What standards define controversial and acceptable speech? With the current emphasis on social media presence, should public employers consider employees' online activity similarly to workplace speech? These considerations are pertinent to the challenges that public employers face while navigating the balance between freedom of speech and a conducive work environment.

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U.S. Const. amend. I.

Appendix A: Department Chair Job Description (HHS 2023a)

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Physician Chair

JOB DESCRIPTION AND PERFORMANCE STANDARDS
Date Last Revised: November 6, 2020
Job Code: 1435
Exempt / Nonexempt: Exempt

BASIC PURPOSE OF THE JOB
<p>A Department Chair is the clinical and academic leader of a Hennepin Healthcare clinical department and is responsible for ensuring the recruitment and retention and development of the medical staff members required to achieve the organization's mission. The Chair manages the department budget with a dyad administrative partner, sets medical staff compensation and oversees the organization's academic mission, care quality and continuous improvement. The Department Chair is responsible for the time allocation of department members and ensures adequate patient access to care while fostering a multidisciplinary and comprehensive approach to care delivery that promotes safe, effective, timely, efficient, equitable and patient-centered care.</p> <p><u>Appointment and Term:</u> The Department Chair shall be appointed for a 5-year term by the Chief Medical Officer based on a recommendation from the Department Chair search committee and after consultation with the cognate department Chairman at the University of Minnesota (when appropriate), the Hennepin Healthcare CEO, the Hennepin Healthcare Vice President of the Medical Staff, and members of the appropriate clinical department. The CMO shall submit the final candidate to the Medical Executive Committee (MEC) for approval of MEC membership. The appointment must be ratified by a two-thirds majority vote of the MEC. Department Chairs are eligible for additional 5-year term renewals upon review and recommendation of the CMO as defined within in the Hennepin Healthcare Medical Staff bylaws.</p>

JOB FUNCTIONS
<p><i>Job functions are those tasks, duties, and responsibilities that comprise the means of accomplishing the job's purpose and objectives. Job functions are critical or fundamental to the performance of the job. They are the major functions for which the person in the job is held accountable.</i></p> <p><u>Department Chair Administrative Duties</u></p> <ol style="list-style-type: none"> 1. The Chair is Accountable for: <ol style="list-style-type: none"> a. Maintaining the continuous evaluation of the professional performance of all medical staff with clinical privileges in the department, including responsibility for the monitoring and evaluation of patient care. b. Determining the qualifications, provider staffing ratios and competence of department personnel who provide patient care services c. Allocating and managing medical staff clinical time to achieve desired productivity levels d. Recommending to the MEC the criteria for clinical privileges in the unique areas of care provided within the department; reviewing and recommending action on the privileges requested by department providers; and making determinations on all requests for temporary privileges within the department as defined in the Hennepin Healthcare bylaws e. Managing and promoting provider satisfaction.

- f. The Department Chair (or designee) is responsible for an annual performance evaluation of department providers. This process should include direct performance feedback and the documentation of clear performance expectations for the next annual period.
- g. Evaluating, with their dyad partner or designee, the performance of non-provider department staff.
- h. Recruiting and hiring advanced practice providers to the departments care teams.
- i. Recommending to operations leadership the consideration and business analysis of new clinical services
- j. Performing such other duties as assigned by the Chief Medical Officer, the MEC or the Hennepin Healthcare Board.

Department Chair Academic Duties

- 2. The Department Chair is Accountable and Responsible for:
 - a. Overseeing faculty continuing education development
 - b. Assigning faculty responsibility to enhance interest and abilities for education.
 - c. Overseeing and assuring the adequacy of the Continuing Medical Education and ongoing academic development of department members.
 - d. Recruiting, evaluating and ensuring accountability and promotion of program directors.
 - e. Overseeing clinical site-specific research for the department.
 - f. Working with University of Minnesota for continued promotion and tenure of faculty as appropriate.
- 3. The Department Chair is Responsible for:
 - a. Overseeing GME program design; assuring clinical excellence as a goal of GME; assuring residency program-compliance and accreditation; and, assuring an adequate financial commitment to support the GME commitment.
 - b. Ensuring optimal patient safety through faculty supervision, coaching, continuous improvement and establishment of evidence-based or consensus clinical care standards.
 - c. Overseeing medical student education through appropriate resource allocation and student advocacy.
 - d. Promoting diversity for the department's training programs.

Department Chair Clinical Duties

- 4. The Department Chair is Accountable for:
 - a. Evolving the department's care models to improve the quality of care, improve the patient experience and reduce cost.
 - b. Increasing Advanced Practice Provider to physician ratios where appropriate to improve access and value.
 - c. Maintaining and improving departmental clinical programs and service lines in collaboration with the Service line leaders and the Clinical Medical Director(s).
 - d. Assuring, in collaboration with the clinical medical director(s), the adequacy of departmental staffing to support safe and timely care.
 - e. Assuring that medical staff members have the appropriate skills required for the patient services being delivered and that care delivery is being coordinated in a patient-centered manner.
- 5. The Department Chair is Accountable and Responsible for:
 - a. Coaching departmental staff on the continuous assessment and improvement of care quality.
- 6. The Department Chair is Responsible for:
 - a. Initiating the development and implementation of new department program(s).
 - b. Enforcing and assuring department members compliance with all regulatory and Hennepin Healthcare clinical policies, procedures and standards.

<p>c. Improving patient access to care through the adherence to Hennepin Healthcare practice standards.</p>	
<p>EMPLOYMENT REQUIREMENTS</p>	
<p>Minimum Education/ Work Experience</p>	<ul style="list-style-type: none"> • Doctorate Degree (M.D. or D.O.) is required • Board Certified in an ABMS recognized specialty • Minimum 5 years administrative leadership experience at the institution, department or section level • Full-time (>0.75 FTE) member of Hennepin Healthcare, with unrestricted clinical privileges customary for a physician practicing in their specialty • Eligible for academic appointment at the University of Minnesota Medical School • Qualified to lead an academic department (for those departments with Hennepin Healthcare-based training programs) or serve as an academic site-leader (for non Hennepin Healthcare-based residency and fellowship programs)
<p>Knowledge/ Skills/Abilities</p>	<p>Leadership Expectations:</p> <ul style="list-style-type: none"> • Embraces Hennepin Healthcare's mission and supports continuous improvement. • Exhibits adaptive leadership skills. • Promotes department member engagement, learning and development. • Models and promotes behavior consistent with the organization's values • Leads and engages faculty in embracing a culture of quality and safety. • Supports and assures interdepartmental collaboration and communication. • Supports clinical service line effectiveness. <p>KSA: Strong action planning skills, interpersonal skills and proven written and verbal communication skills are required. Flexibility, adaptability, motivation and creativity in dealing with change, timeliness and attention to detail are required. Must have proven adaptive leadership experience with the commitment to engage in crucial conversations in groups and 1:1 situations</p>
<p>Leadership Knowledge/ Skills/Abilities</p>	<ul style="list-style-type: none"> • Strategy minded, ability to focus on strategic rather than operational objectives • Ability to effectively allocate resources (i.e. budget and personnel) • Capable of assisting executives in defining organizational goals, critical issues, and strategic plans • Experience modeling and upholding organizational norms and values, particularly with regards to health and safety • Exceptional problem solving and critical thinking when addressing organizational issues • Skilled in fostering a positive workplace culture and building inclusive workplace teams • Experienced in providing and receiving feedback via daily interactions and direct reports • Skilled in creating an environment that is open to feedback
<p>Preferred Qualifications</p>	
<p>License/ Certifications</p>	<ul style="list-style-type: none"> • Board Certified in an ABMS recognized specialty • Hold or be eligible for an academic appointment at the University of Minnesota.

Appendix B: Chronology (Gustilo 2022; Freeman 2022; The New York Times 2022)⁴

Date	Event
January 2008	Gustilo joined Hennepin Healthcare System.
May 2015	HHS appointed Gustilo as Interim Chair of OBGYN Department.
August 2018	HHS appointed Gustilo as Permanent Chair of OBGYN Department.
25 May 2020	George Floyd died because of police officer Derek Chauvin's assault.
July 2020	Gustilo shared her personal opinions on police brutality and Critical Race Theory with on Facebook and with HHS leadership.
September 2020	OBGYN Department doctors reported Gustilo's speech to Hoody and Hilden.
October 2020	Meeting with Hoody, Hilden, and Gustilo to discuss how Gustilo's political opinions affect her department. Conclusion was that Gustilo should notify her viewers that all opinions on her page were hers alone.
November 2020	Internal investigation on Gustilo and the OBGYN Department.
5 January 2021	Results of investigation released. Gustilo found as unpleasant to work with, unable to complete job duties to company requirements.
8 January 2021	Meeting with Hoody, Hauff, and Gustilo to discuss course of action after investigation results. Hoody and Hauff recommended Gustilo leave her position voluntarily.
15 January 2021	Gustilo expressed refusal to step down from Chair. Meeting with HHS leadership and OBGYN department (minus Gustilo). Department members strongly expressed their opposition to Gustilo's tenure.
22 January 2021	HHS placed Gustilo on paid administrative leave from Chair position. Gustilo continued working as a healthcare provider at the hospital.
8 March 2021	OBGYN Department physicians express a vote of no confidence of Gustilo's leadership in a letter to HHS leadership and Gustilo.
13 April 2021	Meeting with MEC to discuss Gustilo's removal. Conclusion was that Gustilo should be removed as Chair.
21 April 2021	Hilden provided HHS Board of Directors with MEC recommendation for Gustilo's removal as Chair.
28 April 2021	HHS officially removed Gustilo as Chair of the OBGYN Department.
27 July 2021	Gustilo released a video documenting her experience at HHS through the Foundation Against Intolerance & Racism.

⁴ I have assembled this table of events using details and timelines from these three sources.

Appendix C: Department Letter to Leadership with Gustilo's Notes (HHS 2023a)

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Response to Dept Issues 3.16.2021 re TG responses to issues in Dept Letter

March 8, 2020

To: Tara Gustilo, MD

From: Physicians and Nurse Practitioners in OB/GYN department at Hennepin Healthcare Re:
issues in our department

Dear Dr. Gustilo,

As you know, representatives from our department, speaking on behalf of the MDs and NPs within our department, have met with leadership and their consultants to express concerns that we have about your leadership.

Because of the power differential at play, the group is not comfortable discussing these issues with you as individuals.

Our concerns involve two separate issues with considerable overlap:

1. Social media postings
2. Lack of confidence in leadership

Social Media Postings

It has come to our attention, directly and indirectly, that you have expressed views on Facebook that are not representative of our institutional mission, or of our department or of us as individuals. However, as a visible leader in our institution, your posted beliefs may be construed to incorrectly represent Hennepin Healthcare, our department, and us as individuals. In the past, your use of Facebook as a platform to solicit funds for our department directly linked you to your position as the Chair of the OB GYN department at Hennepin Healthcare. As your Facebook page until recently was public, anyone with a Facebook account could view these posts.

TG response: I took down my public FB page posts last October, within days of being requested to do so. I also clarified on FB that my posts represent only my thoughts by putting in my profile: "My posts do not necessarily represent those with whom I am affiliated. Obvious, right?" I did this within days of being requested to do so.

We want to specifically state that this does not do directly with respect to your politics. You, like anyone else, have the right to politically support individuals and groups of your choosing. However, your content with which we have issue includes the following:

Posts that imply or directly state that racism does not exist in our society Posts that support others statements of blatantly racist comments

TG response: I have never stated or implied that racism does not exist in our society. What I have disagreed with is the idea that there is systemic racism throughout our society or that the American Experiment is based on racism.

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As for the posts 'with blatantly racist comments', I disagree I have supported such comments. I believe they are confusing disagreement with critical race theory/1619 ideology with racism. Further, I believe they have mistaken my consideration of voices opposed to this ideology (most of whom were also people of color) as racism. Finally, I disagree that the criticisms of me are not politically and racially biased. They are.

We share the following concerns about these posts:

- They may cause our current or future patients to mistrust our department and the medical care we provide
- They create division among our medical staff, midwifery staff, and nursing staff
- They reflect negatively on us as a department when viewed by others, including other employees within Hennepin Healthcare

TG response: I would ask for the evidence that my posts have caused patients or others within Hennepin Healthcare to mistrust our department or the medical care that we provide. I will note that we as a department and I as a clinician have excellent patient reviews.

Regarding creating division, I have not taken any steps to divide. I have been open to all expressing their beliefs and accepted that there were areas of disagreement. I have sought to focus on our areas of agreement and our common goals. It seems that accepting a diversity of ideas is 'creating division' and what is being demanded is allegiance to a 'party line'.

As an institution and as individuals, we are committed to identifying and eradicating racism and inequity in healthcare and society at large, and we desire leadership that also shares these same goals.

Confidence in leadership

Our concerns regarding your leadership include the following:

Difficulty hearing concerns of staff members and responding in a way that gives confidence they are being understood and valued

- o When you asked us to vote on the proposal of absorbing the burden of the midwife salary cuts, you did not accept the first response, and instead, asked for a re-vote. We felt like we had a chance to voice our opinions and were not heard

TG response: I did not just mandate this decision to help our CNM colleagues (as the organization did for people making less than \$60,000) but instead put it to a vote. Moreover, how is asking them to vote a second time not hearing them? The reason I asked for a revote is precisely because people did express their thoughts and opinions and some of the facts they asserted were not correct (for example, how CNM salaries compared with the NPs). After I corrected the misinformation, I did re-iterate that I felt this would be a great way to show the CNMs that we are all one team. As a leader, was I not supposed to push my team to consider again helping our colleagues, especially when the initial vote was based on false beliefs regarding finances? And the

second vote did come out differently. Even at that point, recognizing some were opposed, I made it clear that those who did not want to help simply needed to contact me and I would ensure that none of their funds would be used, covering the deficit myself or with the help of 1 or 2 of the other partners who had offered to do so.

Difficulty understanding the value that the perspectives of your colleagues can bring to the table
When we had a conference call regarding the letter we sent to our patients after the murder of George Floyd, we felt like our voices were not acknowledged

TG response: I have shared the email communications on this in prior documentation. During the Conference call, the discussion was similar. I acknowledged others' priorities but also stated my point of view which was different. Agreeing and understanding/acknowledging are not the same thing. In the email communications after, I think I was clear in my understanding. In the end, I requested only 1 word be changed. Further, I also stated that if this was not acceptable that they were welcome to send the letter but that it could not come from the department as not all in the department felt comfortable with the wording (and I emphasized I would have made this decision if ANYONE in the department felt they could not sign off on the letter as it stood).

- o When we had a conference call regarding our department's role in the White Coats for Black Lives rally, the conversation felt very one-sided.

TG response: Again, I have sent the written email documentation regarding this issue. And again, I did hear what they were saying. The fact of the matter on this issue is that HHS itself had said that we were not to publicly affiliate with BLM, etc. I simply affirmed, similar to the letter, that as a department, we should all agree before publicly affiliating as a department. In this conversation, I had stated that I had a problem with defunding the police and although I support racial justice, I could not support an organization calling for this. One of my partners countered, but "that is not as important." I replied that it seemed we were valuing things differently or something to that effect. In addition, I held a meeting mediated by Syl Jones after this event, given the value disagreements we were having.

Having low visibility within the department and inpatient care areas

- o Some nurses do not know you are the department chair due to your absence on the inpatient side
- o Providers need you to understand the issues they are facing on nights and weekends

TG response: It was not the expectation that as Chair that I work directly in every area that I oversee. I was not working as an obstetrician when I was hired. Given that this is not my area of expertise, it made the most sense to put in place an excellent Inpatient Medical Director, which I did. I was supportive and to the best of my ability sought to address any issue that was brought to my attention. Further, every staff member was allowed to put topics on our monthly staff meeting for discussion. Finally, when staff members brought issues directly to me instead of the Inpatient Medical Director, I again sought to aid to the best of my ability.

As far as I can discern, it is not the expectation that the Chair of a department know or be known by every nurse in every area that he/she oversees.

Using a reactive approach to address conflict with medical and nursing staff which creates a fearful and mistrustful environment

- o Bringing a nurse manager to tears regarding a pandemic related supply chain issue

TG response: I do not agree with this very general assessment and can't address without specifics. Again, you have extensive email documentation regarding how I have approached things. Below is the email exchange that it is claimed brought the nurse manager to tears. It should be apparent that this assessment is an inaccurate portrayal of the facts.

From: XXX@hcmcd.org>
Sent: Wednesday, September 2, 2020 5:28 PM
To: Gustilo, Tara
Subject: RE: Cook catheters

Thank you! It has been a very busy summer with a huge learning curve but I appreciate how supportive everyone has been.

XXX
XXX
Birth Center
Hennepin County Medical Center
612-873-XXXX

From: Gustilo, Tara <Tara.Gustilo@hcmcd.org>
Sent: Wednesday, September 02, 2020 4:28 PM
To: XXX@hcmcd.org>
Subject: Re: Cook catheters

I truly appreciate you taking this on!

How is it going? I have been hearing nothing but compliments about you!

Tara

Get [Outlook for iOS](#)

From: XXX@hcmcd.org>
Sent: Wednesday, September 2, 2020 4:06:19 PM
To: Gustilo, Tara <Tara.Gustilo@hcmcd.org>
Subject: Re: Cook catheters

Thanks Tara,

What had happened is the product we typically use is on back order (COVID) and we have a sub item that doesn't have a stylet. We have communicated with everyone and have a remedy when a stylet for a foley bulb. Unfortunately, this all came to light on a Friday afternoon on August 28th. I had notified all the provider leads and had multiple discussions with providers about what I was doing to remedy the situation. I apologized that this happened and am working to ensure it doesn't happen again.

XXX
XXX
OB/GYN Inpatient

From: Gustilo, Tara <Tara.Gustilo@hcmcd.org>
Sent: Wednesday, September 2, 2020 3:00 PM
To: XXX@hcmcd.org>
Subject: RE: Cook catheters

Great news! My team was wondering what happened and I promised to check on it. Glad to hear there are no major systemic issues that need addressed.

Thanks again!

Tara

From: XXX
Sent: Wednesday, September 02, 2020 9:49 AM
To: Gustilo, Tara <Tara.Gustilo@hcmcd.org>
Subject: RE: Cook catheters

Good Morning Tara,

This has been remedied. It was a multilayered issue that has been resolved. It was not a supply chain issue, it was a manufacture shortage. We cannot get catheters with stylets until 9/18. We have a substitute. The patient Dr. Alabi is referring to actually elected to have a c/s today rather than going through a lengthy induction process.

XXX
XXX
Birth Center
Hennepin County Medical Center
612-873-XXXX

From: Gustilo, Tara <Tara.Gustilo@hcmcd.org>
Sent: Wednesday, September 02, 2020 8:36 AM
To: XXX@hcmcd.org>
Subject: RE: Cook catheters

XXX,
Can you tell me what happened here? Is there a system issue that needs to be addressed? This sort of shortage cannot happen going forward and I would like to do everything that we can to ensure this.

Please let me know your understanding. If it is an issue with supply chain, can you please let me know with whom you are working and their explanation?

Many thanks,

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HHS-00000372

Tara

The mission and vision for our department is currently unclear

- o Our group is committed to the eradication of injustice and inequity experienced by patients and staff in our department, we are not certain you share that goal

TG response: I think my record of accomplishments indicates that I have been working on these issues for years. I have continued to work on these issues up until now.

- o You requested providers improve quality metrics by performing clerical tasks which would typically be performed by another team member (i.e. medical assistant)

TG response: I am not sure to what this is referring but I think it is when I asked if they would have the capacity to review the pap and mammogram deficiencies in our department. I proposed giving them a monthly report of those patients who registered as deficient and that they had seen. The goal was to clean up the data base and also to contact those truly behind in the screenings. My reason for asking was that it was already determined that nursing did not have the capacity and it would likely not be more than a handful of patients each month. When the staff said 'no', I let it drop and again asked the ELT for consideration of an organizational wide addressment of the issue.

My question: why is it wrong to ask?

- o We have not given significant attention as a department to our declining OB volumes

TG response: I have been trying to address declining OB volumes for years. I even used department funds to pay for an advertising campaign a few years back. The executive leadership is well aware of the declining OB volumes and the challenges we have given our current Birth Center and lack of advertising in a very competitive market.

Given I cannot control renovation of the Birth Center or marketing dollars, the approach I have taken has been to ensure excellent patient care, the development of more holistic offerings (we now have both psychiatry and pelvic PT available in our clinic), seeking to create a more culturally competent staff and care models, and improving provider communication.

Several members of the department have also felt uncomfortable when you have described COVID-19 as "no worse than the flu" and suggested that schools should be opened in a business-as-usual state. As medical providers and scientists, we find this attitude concerning as it brings into question your judgment and your ability to take into adequate consideration the safety of our patients, our community, and us as individuals.

TG response: I have noted that the risk of complications for healthy children is higher for the flu than for Covid which is exactly what the CDC itself says. I have also noted that I think it is short sighted for our country and politicians to only look at Covid and to not consider the costs of the shutdowns on mental health, suicides, missed abuse, our economy and the educational losses of our children, especially those most vulnerable.

- o Providers have witnessed you openly providing recommendations in contrast to CDC guidelines with regard to the pandemic and vaccination

TG response: I have read the CDC guidelines and it is true, I personally do not understand why when there is a vaccine shortage that we were not using antibody testing to identify people with immunity and prioritizing those who have none and are high risk. My thought processes, while not in agreement with the CDC, are also based in science. I have never tried to prevent anyone from taking the vaccine or even discouraged anyone from taking the vaccine. I do believe there are other rational, scientifically based approaches to the distribution of the vaccine from what the CDC has recommended.

I have never 'recommended' that someone not follow CDC guidelines but have encouraged people to decide for themselves how to proceed given the data at hand.

- o Providers have experienced criticism from you when taking additional precautions during the pandemic (specifically keeping children home from school)

TG response: I have never 'criticized' anyone for keeping their child home from school. Again, I may have cited the data from the CDC stating that for healthy children, complications are higher for the flu than for Covid. I have also expressed the wish that schools would open and that my son could attend in person learning. These statements were made during informal conversations.

We mentioned that there is overlap of the issues. As an institution caring for marginalized communities disproportionately affected by COVID, it is difficult for us to separate your views from our department and institution, and by default ourselves.

While we recognize and appreciate the positive changes that you have brought to our group (ie. adjusting our schedules to accommodate the day off post-call, protecting our salaries from possible future salary readjustments, building bridges with the midwife service, hiring staff that are committed to the mission and vision of the institution, and leading our department through the peak of Covid), we as a group, feel that recent changes in judgment, leadership, and relationship with your team as expressed above cannot possibly return to a place where they are in line with the institutional mission and a place where you could regain our trust.

TG response: I appreciate and believe I deserve the positive statements made above in parentheses. I deny, however, that there have been "changes in judgment, leadership" and assert that the changes in "relationship with {my} team" do not stem from my behavior but theirs. I submit that the criticisms in this letter are mistaken, overblown and fundamentally based on political and ideological bias against me. I submit that these criticisms are related to my support of a Republican candidate and my principled disagreement that racism can be fought by promoting the ideology of Critical Race Theory which casts whites and the US Constitution as inherently racist/evil and people of color as victims without self-determination.

Sincerely,

(signed by 13 Medical Staff members of Dept. of Ob/Gyn –names redacted)

Appendix D: Initial Complaints from OBGYN Physicians (HHS 2023a)

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Meeting Notes from David Hilden 9/25/20 re Initial Meeting with Dr. Hilden and 4 ObGyn Medical Staff Members

Meeting with four physician members of OB-Gyn, 9/25/2020

Verbatim transcription of handwritten notes of David Hilden, which were taken on that day

OB/Gyn meeting Friday 9/25/2020 7:00 A5 conf room

Drs. AAA, BBB, CCC, DDD

Concerns re: Dr. Gustilo's social media post, racial nature of posts.

All 4 of these MDs feel Dr. Gustilo's tone of leadership has changed, is not supportive of staff.

Concern that there could be physicians leaving.

OB/Gyn department has had tensions since George Floyd

Ex: Doctors for Black Lives event at State Capitol led to misunderstanding. TG insisting on different terms "rioting" as example.

Ex: Dr. G less accessible, not her old self. . . "sits in corner" of clinic, not engaged.

Initially concerns that Dr. G had social media posts came from nursing in L&D.

Per these 4 MDs: recognition that Dr. G has the right to her own views and to state them. However, she has crossed a line in that she is public in advertising that she is chair of OB @ HHS and her personal views may be seen as representing the dept and them.

Themes (DRH summary)

1. Her personal views are interpreted, potentially, as the views of HHS
2. POC will not be comfortable getting care here.
3. Staff do not feel comfortable with her leadership especially staff of color (this was expressed by a white physician)
4. Sense is that Dr. G is not advancing D, E, I issues
5. Some worry that physicians will leave (2 or 3 said they would leave HHS if her leadership concerns don't change).
6. All feared retribution from Chair so are not comfortable having their names shared

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Appendix E: Gustilo Responds to Department Complaints (HHS 2023c)

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My Dear Colleagues letter I sent to my department

My Dear Colleagues,

Some of you are concerned regarding my recent Facebook posts and current political leanings. It seems there was worry that these posts may reflect upon yourselves or our department and this made some uncomfortable. Although I do believe every private citizen has a right to express themselves freely, I have taken down my public posts in deference to this sentiment.

A word on Facebook...I posted items that I found provocative or challenged my thinking. I did not necessarily agree with everything I posted but I did find the content worth consideration. I also sought to give voice to how different priorities could result in people of good heart reaching different conclusions. I did not pay much attention to the sources (unless it was a factual piece, then I would confirm the facts), instead considering only the ideas presented.

In recent months, I have actively sought to challenge my thinking in many different areas and have purposely exposed myself to a broad diversity of opinions. I try to remain open minded and avoid questioning individual integrity, focusing rather of the thought processes and arguments for and against any given position. I test the different perspectives I encounter against the facts that I know as well as my life experiences and core values.

Similar to what has happened every time in my life when I have deeply and openly engaged in any topic, my exploration of ideas has altered how I understand things. The changes in my perspective have not, however, changed my core principles or values.

I believe that as Chair of this Department, it is my primary responsibility to ensure that we provide excellent healthcare to those we serve. I have sought to fulfill this responsibility by ensuring that we have only the best clinicians, promoting clear standards of care and comportment, cultivating a supportive work environment, promoting a more holistic understanding of health, and pursuing equitable and culturally sensitive care models. I came to HHS for the opportunity to become the Healer I want to be and to ensure that the most vulnerable in our community are cared for well. I believe this sentiment is one that I share with most of you.

Having the same goals should be powerful unifying force. Assuming we are all of good heart, the differences we may have in how best to pursue our goals should be a source of strength. Diversity of thought in the context of open and thoughtful conversations can only make our collective thinking and approach to difficult issues stronger.

I believe that I have proven that I am an open minded person. I also believe that I have a record of being a supportive and collaborative leader. As Chair of this Department, I have actively sought input when decisions needed to be made, seeking to understand the concerns of others. In most instances, consensus was achieved. In those times this was not possible, I have tried to be clear on the reasons for my decisions. Further, whenever possible, I have tried to ensure that final decisions were crafted in a way that allowed freedom for each to behave according to their conscience.

I have worked hard to understand the issues that make our collective work life difficult. When within my power, I have done my best to ameliorate these issues. Further, when the solutions lay beyond my

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control, I have been a vocal advocate for us to our executive leadership or others who do have the power. I have also actively sought to support the needs of individuals, whether that was flexibility in schedules for professional or personal interests, supporting administrative work interests, supporting clinical work interests, etc.

I hope going forward we can focus on our common interests: excellent healthcare for all, a supportive and positive work environment and achieving financial success that will allow us to grow and expand. If you have concern regarding the trajectory of our departmental work, please let me know.

Currently, the areas that I am working on for our department: culturally and socio-economically aware care models, addressing the racial disparities in birth outcomes, expanding Doula care to antepartum/postpartum, provider communication skills (with the hope we can incorporate these learnings in our teaching), re-evaluating our model with social services, expanding pelvic PT to be embedded in our clinic, continuing mental health service in our clinics, identifying the right balance with virtual and in person care, creating templates and coverage that will make us financially successful, how to leverage our website, engaging our foundation to support programs we want to develop, addressing the lack of operating room availability, the need for another robot, the Connection Center and how appointments get made and nursing support.

I believe we can accomplish great things and that together we can find better ways of healing and of making our community healthier. I welcome the opportunity to discuss with you any concerns you may have.

Respectfully,

Tara Gustilo, MD MPH

HHS-00002031

Appendix F: Email Documenting Physician's Meeting with Gustilo (HHS 2023a)

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Email from ObGyn Medical Staff 10.8.20 re Response to FU with ObGyn
Medical Staff Email

From: ZZZ
Sent: Thursday, October 8, 2020 1:49 PM
To: Hilden, David; WWW, XXX; YYY
Subject: RE: Checking back

Dr. Hilden,

I know WWW was going to touch base with you too but I just wanted to let you know that I had a very disheartening conversation with Tara today. She asked to speak with me today during lunch time to find out what was going on that the group was unhappy about.

First, I inquired if she was okay. I told her that we had noticed a dramatic change in her in the past several months and we were concerned that she may be going through some difficulties in her personal life. She assured me that she is "not having a mental breakdown". She admitted that she has changed in the past several months. She said that this change began when she watched the impeachment trial and started to "do her own research".

She asked why we had not gone to her directly instead of going to her boss because she had always been fair. I said that unfortunately, the social distancing required by the pandemic coincided with her changes and at this point. Consequently, we do not feel she is the same person she was several months ago and so we were not sure how the new Tara would react.

I let her know that many people had seen her posts on Facebook – having gone there on their own or by the urging of others in our health system, both in and out of our department. I told her that some of her posts were felt to be offensive and hurtful. I'm sorry to say that she seemed to have absolutely NO insight to how her words may be offensive or hurtful. Instead I got a 10 minute mantra about China's deceit with regard to the current pandemic. When directly confronted with if she could see how her posts could be offensive she said that she is not racist and they were not meant that way.

Unfortunately, I'm left even more discouraged than when we met with you. I'm not sure how much good a meeting with a moderator is going to do. She does not seem to want to admit that we've been hurt.

Thanks again for all of your help with this difficult situation. Hoping you can give us some sort of update at some point.

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ZZZ

Email from ObGyn Medical Staff 10.8.20 re Meeting with IG and ObGyn Medical Staff Member

From: ZZZ
Sent: Thursday, October 8, 2020 2:50 PM
To: Hilden, David
Cc: WWW, XXX, YYY
Subject: meeting with chair

Dr. Hilden,

I sent an email yesterday but it isn't clear if that got to you (as it didn't get to XXX, YYY, and ZZZ). Anyway – this is a longer-winded version of what I sent previously. Sorry if it's a duplicate.

I wanted to touch base with you as I had a rather disheartening conversation with Tara around noon yesterday.

Tara talked for a couple of minutes at the end of our department meeting on Tuesday AM about it having been brought to her attention that there were concerns about her that seemed to be related to social media. I don't recall her exact words but at the end, my thought was that either she had not been told everything that we were concerned about or worse, she had been told but had not taken it to heart.

She caught me in clinic on Wednesday morning and asked if I could spare some time for us to chat around lunch. I consulted XXX, YYY, and ZZZ to see what they thought I should do. Should I decline to meet and say that I'd prefer we handle it with the mediator, should more than one of us meet with her to provide witness, or should I just have the meeting? YYY offered to meet with her instead. In the end I decided to meet with her as she had approached me specifically. Here's how it played out...

Tara thanked me for meeting and asked about what was going on in the department.

I replied that we had noticed a change in her over the past several months. First, and foremost, we were worried about her – was there anything going on in her personal life or otherwise that she needed help for? If so, we wanted to help her. Was she okay?

She assured me that she was not “having a mental breakdown” if that’s what I meant. She admitted that she had changed – and that it started when she watched the impeachment trial and felt that things she saw there did not add up so she took it upon herself to do her own research. She asked for examples of what our concerns were. She stated that she knew that our political views (hers and mine) were different but that was not a problem.

I agreed, that I had no issue with her personal politics. I told her that several people had seen her Facebook posts (either on their own or after being pointed there by others, including from people outside of our department). Some of her posts were felt to be offensive and hurtful.

She asked for more specific examples.

I mentioned the post regarding an apple orchard near Hinkley referencing the “China virus”.

She asked what the problem with that was.

I said that it was felt to be racist.

From here she started into a 10 minute mantra about how the virus did come from China, other viruses are named for where they originated, China knew that the virus was dangerous but did not tell other countries about that, China started to buy all of the PPE so they could later sell it at a profit...

I tried to redirect – I let her know I’d heard those arguments – but could she see that calling it the “China virus” could be hurtful?

She said that she had deleted “that post” (I’m not sure exactly which post) but no one should assume that she was speaking for anyone else and didn’t see how her posts would hurt HCMC, but “that wasn’t the point, I didn’t mean it that way”, repeated several of the points in her mantra. “I’m part Asian”...

Clearly NO insight.

I again cut off the mantra. I said that she had previously used Facebook as a platform to raise funds for our department so she directly linked herself to HCMC and to our department – so particularly as a leader, anything else that she posted could be seen as directly linking to us as an institution, a department, and as individuals in the organization. We were concerned that if people saw her posts and her relationship to HCMC and our department that they would be left with concern about how they might be treated by us. We were also concerned that some of her posts were not in line with the mission of HCMC.

She then said that she was hurt that no one had come directly to her.

I pointed out that there is a power differential at play so that makes it more complicated.

She said, but she’d always been fair to us.

I said that there had been several occasions where we felt we hadn’t been heard, that conversations seemed to be progressively one-sided. I noted that we saw this big change in her, it even happened to

coincide with the pandemic and so social distancing makes it harder to have those conversations. Furthermore, while it may have been easy to approach the Tara we knew a year ago, we no longer were sure who we were dealing with so when you couple that with the power differential we weren't sure how to deal with this new Tara.

Still no insight to how this is affecting her leadership.

I'm sure I've left things out. By the end the discussion was unpleasant and she was clearly not happy with me but thanked me for meeting with her.

I'm deeply saddened to have learned very clearly that she has absolutely no insight to these issues. I feel even more strongly after this discussion with Tara that she cannot lead our department. I can't directly speak to how this reflects on our institution. I certainly have concerns there too – but that is well above my pay grade. I know that our OB GYN providers have very little control over the situation which is why I'm giving you these details. I'm not yet sure when we will have our meeting with Tara and a mediator but given the lack of insight I saw yesterday I don't hold out much hope for that meeting.

We would appreciate any updates that you are able to provide to us. As you can imagine, it's been quite tense around here since Monday – and even worse since Tuesday morning.

Thanks again for all of your help with this difficult situation. We truly appreciate what you are doing.

ZZZ

Appendix G: Hoody, Hauff and Gustilo Meeting on Investigative Report (HHS 2023a)

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Respectfully submitted, January 5, 2021

Glenda H. Eoyang, PhD and Janice Downing
Human Systems Dynamics Institute
50 East Golden Lake Road Circle Pines,
MN 55014 geoyang@hsdinstitute.org
763 350 1232

Meeting Notes from D Hoody 1.8.2021 re Share Consultant Feedback

Meeting summary from January 8th, 2021

Follow up discussion with Dr. Tara Gustilo

Attendees:

- Dan Hoody
- Tara Gustilo
- Jennifer Hauff

The purpose of this meeting was to share the consultant feedback. The consultant team had previously informed us that they had grave concerns about Dr. Gustilo's ability to continue leading the department based upon the information they had received in their initial interviews. A written summary of the feedback themes was provided to Tara during the meeting.

I opened the meeting with a thanks to Tara for meeting with us and an acknowledgement that waiting for this report was likely stressful. I then informed her that I had a report from Human Dynamics Institute Consultants, and that I would be sharing with her the common themes from that report. I did state that we were not making any decisions today about future direction, and that the purpose of the meeting was not to debate the merits of the feedback. Instead, it was to become familiar with the information and create platform for reflection.

I then walked through the themes of the report one by one with Tara. She followed along on her copy of the report. After completion of the report review, I did ask her about her impressions of how the themes from the report impacts her ability to lead the department as Department Chair. Included in her response was the desire to reflect on this question more.

I then informed her that I am very concerned with the themes highlighted in the report. In particular, I highlighted several concerns related to creating an environment of inclusivity and diversity and maintaining trust and open lines of communication with the department members. I highlighted the related components of the Physician Chief job description KSA that pertain to these areas. Specifically, from the job description:

Leadership Expectations:

- Embraces Hennepin Healthcare's mission and supports continuous improvement
- Exhibits adaptive leadership skills
- Promotes department member engagement, learning and development
- Models and promotes behavior consistent with the organization's values
- Leads and engages faculty in embracing a culture of quality and safety

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Leadership KSA's:

- Skilled in fostering a positive workplace culture and building inclusive workplace teams
- Experienced in providing and receiving feedback via daily interactions and direct reports
- Skilled in creating an environment that is open to feedback

I also communicated that there is a common fear from staff of being retaliated against based upon this feedback, and she was to not engage her department in conversation about these matters going forward until directed otherwise.

Based upon the themes provided in the report in the context of the previous department members who had reached out to Dr. Hilden about similar concerns in the previous months, I then informed her that I have grave concerns about her continuing in her Leadership role, and that I would like her to think about voluntarily stepping down from the role as Chair of OB/Gyn. I informed her that she did not need to give an answer now, and that I would like her to take some time to reflect on the report and we will regroup in the following week to continue the discussion. I also informed her that Dr. Hilden and I will be scheduling a meeting next week with her department to provide an update on the consultant process. Due to the concerns raised here, I told her that we will be meeting with just the staff and feel it is best if she is not present.

I ended the discussion by thanking her for meeting with us, acknowledging that this was a lot of information to take in and may be understandably upsetting. I reminded Tara that HHS has an anti-retaliation clause in our Prohibited Harassment & Discrimination and Interpersonal Conduct policies. Finally, I again reinforced to Tara that we are letting her know that she is not to make any comments about this process or any information that we've shared with her from the report to her direct reports without first getting approval from myself and HR.

Appendix H: Gustilo's Refusal to Step Down (HHS 2023b)

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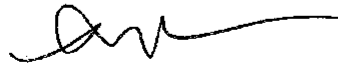
January 15, 2021

Dear Dr. Hoody:

I have considered the request that I voluntarily step down from my position as Chair of the Department of Obstetrics and Gynecology at the Hennepin Healthcare System. I have reflected upon my performance as Chair and also the concerns that have been presented to me regarding my leadership on behalf of my department. I understand that these concerns are said to be strongly felt by some, but there are no actual facts or incidents of bad performance, "discrimination," "retaliation" or "racism" raised against me, and none exist. These are just excuses for efforts to "cancel" me.

After much reflection, I have decided that I will not voluntarily step down. I believe that I am being asked to step down, as I have told you previously, not because of my job performance or any of these excuses, but rather due to my political beliefs and my support for the Republican Presidential candidate, in violation of Minnesota Statute 10A.36, and my opposition to the Marxist and racist Critical Race Theory ideology, in violation of my First Amendment Constitutional Rights.

Respectfully,



Tara Gustilo, MD MPH



HHS-00003975

Appendix I: Order for Administrative Leave (HHS 2023b)

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January 22, 2021

Tara Gustilo, MD
Physician Chair
Obstetrics and Gynecology

RE: Administrative Leave

Dear Dr. Gustilo:

You are being placed on paid administrative leave from your duties as Chair of Obstetrics and Gynecology effective today, January 22, 2021, pending further review of the concerns regarding your leadership performance. You will have the opportunity to respond to concerns or criticism regarding your leadership raised over the past months. You will continue at your current rate of pay during this administrative leave.

During this time, and until further notice, you will only perform your responsibilities for direct patient care or other project work unrelated to Chair duties. While you are on administrative leave from your responsibilities as Chair of Obstetrics and Gynecology, you are not to perform any of your Chair responsibilities. If there is Chair work that needs to be completed while you are on this paid administrative leave, you are expected to work with me or my designee to transition any work necessary.

While on administrative leave from your Chair responsibilities, you are asked to remain available by telephone or e-mail and be available for any further proceedings regarding this matter.

During this leave, you are to have no contact with any direct reports or any other HHS employees regarding concerns related to your leadership performance. In addition, HHS policy prohibits any retaliation against complaining parties or witness and you are directed to not take any retaliatory action. Failure to adhere to these directives could result in disciplinary action up to and including termination.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hoody".

Daniel Hoody, MD, MS
Interim Chief Medical Officer

cc: Jennifer Hauff, HR Manager
HR File

Appendix J: HHS Policy on Appointing and Removing HHS Leaders (HHS 2023a)

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Appendix

The Joint Commission Requirement re: Process to Select, Elect and Remove MEC Members

<p>MS.01.01.01 Medical staff bylaws address self-governance and accountability to the governing body.</p>	<p>21</p>	<p>The medical staff bylaws include the following requirements, in accordance with Element of Performance 3: The process, as determined by the organized medical staff and approved by the governing body, for selecting and/or electing and removing the medical executive committee members.</p>
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HHS Medical Staff Bylaws Section 9.5

Excerpt from the BYLAWS OF THE MEDICAL STAFF, Hennepin Healthcare System

Approved: Medical Executive Committee: 12/8/2020, HHS Medical Staff: 1/8/2021, HHS Governing Body: 2/24/2021

9.5 SELECTION, APPOINTMENT, TERM, AND REMOVAL

A Department Chair shall be appointed by the MEC pursuant to the following process:

- 9.5-1 At least one member of the PLDC, as determined by the PLDC, together with other members determined by the CMO, VPMA, and CEO acting as a search committee and following consultation with the appropriate department head at the University of Minnesota and members of the Medical Staff of the involved department, shall submit a slate of candidates to the CMO, VPMA, CCO and the CEO for their consideration.
- 9.5-2 The CMO, after consultation with the, CCO, VPMA, and the CEO, shall review the slate of candidates and reach a recommendation for the final candidate.
- 9.5-3 The CMO shall submit the final candidate to the MEC for approval of MEC membership. The appointment must be ratified by a two-thirds majority vote of the MEC to become effective. If such candidate is approved, the CMO shall communicate the selection to the Governing Body.
- 9.5-4 The CMO and/or their designee shall review the performance of each Department Chair at least annually.
- 9.5-5 A Department Chair shall serve a five-year term and may be reappointed for one (1) additional five-year term. The CMO, in consultation with the PLDC, shall review a Department Chair prior to reappointment.
- 9.5-6 A Department Chair may be removed by action of the Governing Body or by a two-thirds vote of all members of the MEC that the Governing Body subsequently approves. Removal from office alone has no effect on Medical Staff appointment or Clinical Privileges.

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Appendix K: Letter to Board Recommending Gustilo's Removal (HHS 2023d)

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****CONFIDENTIAL****
PURSUANT TO
MINNESOTA'S PEER REVIEW STATUTE
MINN. STAT. SECTION 145.64
DO NOT DISTRIBUTE

To: HHS Board
From: David Hilden, MD, Vice President of Medical Affairs
Date: April 21, 2021
Re: Medical Executive Committee Action

Request:

This matter comes to you after being thoroughly considered and then voted upon by the Medical Executive Committee (MEC) on April 13, 2021. The MEC consists of 28 members. This committee made and seconded a motion to remove Dr. Tara Gustilo as the Department Chair of OB-GYN. Of the 27 MEC members present on April 13, 2021, 25 voted for the removal of Dr. Gustilo, Dr. Gustilo voted against and one member abstained. Pursuant to the Medical Staff Bylaws this matter now comes to you for subsequent approval of the MEC's near unanimous decision. A removal from this office has no impact on medical staff privileges.

Background:

This matter arises following the development of a chasm in the OB-GYN department and the inability of the Department Chair to provide the leadership necessary to repair the divide. In September 2020, concerns were brought by several physicians, other providers in OB-GYN, nurses, and other medical staff members outside of OB-GYN to executive leadership about the performance of Dr. Gustilo. Several members of the department initially raised concerns which focused on Dr. Gustilo's ability to lead the department during challenging times. Department members questioned her capacity to provide empathic leadership, particularly around racial justice issues, cultural sensitivity and creating a psychologically safe work environment for all but in particular for patients and staff who are people of color.

Medical Staff leadership retained an independent outside human resources consulting firm, Human Systems Dynamics Institute (HSDI) to conduct a departmental environmental review. The report highlighted several concerns about Dr. Gustilo's leadership around the atmosphere in the department and cited her failure as leader to provide an atmosphere in the department of safety for its members, particularly for people of color.

In January 2021, a meeting was held with members of the OB-GYN department, excluding Dr. Gustilo, to share their thoughts about the review and the state of the department. All members, who chose to speak, voiced the opinion that there was no path for correcting the atmosphere in the OB-GYN department as long as Dr. Gustilo remained as Chair. Some indicated that the department's future was at risk and that they likely could not continue to practice at HHS with Dr. Gustilo as the Chair. Some cited the "Nobody gets a pass" stance that HHS has promoted. No person spoke in favor of having Dr. Gustilo remain as Chair.

Dr. Gustilo was presented with the findings of the HSDI consultant, the findings from the department meeting and was offered several opportunities to voluntarily step down as Chair while continuing her clinical practice. She declined verbally and in writing. On January 22,

HHS-00000027

2021, HHS offered Dr. Gustilo a voluntary paid administrative leave from the Chair position, which she declined. At that time, on January 22, 2021, she was placed on involuntary paid administrative leave from the Chair position, but continued in clinical practice.

On March 8, 2021, a letter signed by 13 of 14 physician members of the OB-GYN department was sent to Dr. Gustilo and copied to management. The letter outlines their concerns and concludes with a statement that they do not support Dr. Gustilo as their leader. The letter concluded with:

“...we as a group, feel that recent changes in judgment, leadership, and relationship with your team as expressed above cannot possibly return to a place where they are in line with the institutional mission and a place where you could regain our trust.”

Due to the deepening chasm in the department that could not be improved with the intervention of an outside HR firm, a decision was made to seek the removal of Dr. Gustilo as the OB-GYN Department Chair. Notice was given in middle March for the hearing to be held on April 13, 2021. The Vice President of Medical Affairs provided materials and a statement supporting removal, and Dr. Gustilo provided the same against removal. Hundreds of pages of documents were submitted for MEC consideration. Critical amongst them were:

- The description of Chair Responsibilities:
 - “The recruitment and retention and development of the medical staff members required to achieve the organization’s mission”
 - “Managing and promoting provider satisfaction”
 - “Promotes department member engagement, learning, and development”
 - “Models and promotes behavior consistent with the organization’s values”
 - “Leads and engages faculty in embracing a culture of quality and safety”
 - “Exhibits adaptive leadership skills”
 - “Skilled in fostering a positive workplace culture and building inclusive workplace teams”
 - “Skilled in creating an environment that is open to feedback,”
- The consultative report from HSDI,
- The March 8, 2021, letter from the OB-GYN providers, and
- Recent 360 review results for Dr. Gustilo.

During robust discussion the MEC noted the following critical points as a basis for their decision:

- Dr. Gustilo had lost the support of her colleagues which is a critical element of being a departmental leader and necessary for the continued success of the department.
- As a Department Chair, Dr. Gustilo had raised issues at work that are not related to the job duties and ultimately negatively impacted the staff and created a poor environment in the department.
- As a leader, Dr. Gustilo had not accepted responsibility, but rather blamed staff without apology.
- Dr. Gustilo failed to change and adapt to the environment in ways needed to support the team.

HHS-00000028

- Dr. Gustilo was not meeting critical elements of the Chair's job responsibilities.

Please know that the Office of the Medical Staff has and will continue to offer support for the well-being of all OB-GYN staff, including Dr. Gustilo.

HHS-00000029

Appendix L: Board Unanimously Votes for Gustilo’s Removal (HHS 2023d)

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**Resolution of the Board of Directors of
Hennepin Healthcare System, Inc. (HHS)
Approval of The Medical Executive Committee Decision**

At the HHS Board meeting of April 28, 2021 the Medical Executive Committee (MEC) sought approval of their vote on April 13, 2021 to remove Dr. Tara Gustilo as the Department Chair for OB-GYN.

Recitals

Pursuant to Notice the Medical Executive Committee met on April 13, 2021 to consider a motion to remove Dr. Tara Gustilo as the Department Chair of OB-GYN. Pursuant to the HHS Medical Staff Bylaws, Section 9.5-6:

A Department Chief may be removed by action of the Governing Body or by a two-thirds vote of all members of the MEC that the Governing Body subsequently approves. Removal from office alone has no effect on Medical Staff appointment or Clinical Privileges.

The MEC consists of 28 members. After being thoroughly considered 25 members voted for removal, Dr. Gustilo voted against removal and one member abstained. Pursuant to the Medical Staff Bylaws the MEC seeks subsequent approval from the HHS Board.

Action

Now, therefore, be it resolved that the HHS Board approves the Medical Executive Committee’s April 13, 2021 vote to remove Dr. Tara Gustilo as the Chair of the OB-GYN Department.

The question was on the adoption of the resolution and there were 13 **YEAS** and zero **NAYS** as follows:

Hennepin Healthcare System, Inc. Board of Directors	YEA	NAY	OTHER
Jennifer DeCubellis	✓		
Irene Fernando			Absent
Jacob Gayle	✓		
Marion Greene	✓		
Melissa Irving	✓		
Brock Nelson	✓		
Kris Petersen	✓		
Arti Prasad	✓		
Brian Ranallo	✓		
Steve Thompson	✓		
Kathy Tunheim	✓		
Diana Vance-Bryan	✓		
Craig Warren	✓		
Thomas Wyatt	✓		
David Ybarra			Absent

Attest:

HHS-00000021

Jennifer DeCubellis, Secretary of the Board

HHS-0000022