

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MEHARRY MEDICAL COLLEGE

and

JOSHUA RAY ANTHONY, an Individual

Cases 10–CA–299029
10–CA–314858
10–CA–323732
10–CA–343539
10–CA–348275

Katherine L. Miller, Esq.
for the Acting General Counsel.

Jennifer G. Cook, Esq.
Nakimuli O. Davis-Primer, Esq.
Baker Donelson
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Nashville, Tennessee, on May 13–16, 2025. Two witnesses appeared by videoconference on June 5 and 6, respectively. Joshua Ray Anthony (Dr. Anthony or the Charging Party) filed charges on various dates between September 2023 and August 2024, and the Acting General Counsel issued the consolidated complaint at issue here on March 7, 2025. Meharry Medical College (Meharry or the Respondent) filed a timely answer denying all material allegations.¹

The complaint alleges the Respondent violated Section 8(a)(1) and (4) of the National Labor Relations Act (the Act) by deactivating Dr. Anthony’s alumni email account, which involved disparately enforcing its policy entitled “Acceptable Use of Information Technology Resources”; refusing to consider for hire or refusing to hire Dr. Anthony for a “PGY-3” residency position; refusing to consider for hire or refusing to hire Dr. Anthony for a “PGY-2”

¹ As detailed below, Dr. Anthony filed previous charges but do not comprise allegations in the instant complaint.

residency position; providing a negative reference for Harlem Hospital’s residency program; and refusing to update Dr. Anthony’s “summative evaluation” form to reflect credits Dr. Anthony earned for work he performed.

On the entire record, and after considering the briefs filed by the Acting General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a private nonprofit medical college with a facility in Nashville, Tennessee, where it annually purchases and receives products and goods valued in excess of \$5,000 directly from points outside the State of Tennessee, and derives gross revenues available for operating expenses in excess of \$1,000,000. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Meharry Medical College is one of the oldest and largest historically black medical colleges in the country, with a school of medicine and a school of dentistry, among other programs. Meharry has a psychiatry residency program, which is typically a 4-year program. Completion of the residency is generally the last step before taking the exam to become a board-certified psychiatrist.² The residency progression is labeled in terms of postgraduate year or “PGY.” First year residents are referred to as PGY-1, second year as PGY-2, and so on. Some Meharry psychiatry residents may take advantage of a “fast track” program in child psychiatry where the residency is completed in three years instead of four.

Residents must pass exams administered by the United States Medical Licensing Examination (USMLE) before entering and progressing through the residency. They must pass the USMLE step 1 and step 2 exams before being accepted into a residency program, and they must pass the step 3 exam to continue in their third year of residency. The psychiatry residents work at various medical facilities performing rotations in certain prescribed specialties.

Residents at Meharry work under annual contracts that run from July 1 to June 30, that are not automatically renewed. Renewal is based on the resident’s clinical performance and the availability of positions. (R Exhs. 3, 15.)³

² Becoming board-certified involves a more rigorous process than obtaining a medical license.

³ Abbreviations used in this decision are as follows: “Tr.” for transcript; “R Exh.” for the Respondent’s exhibit; “GC Exh.” for the Acting General Counsel’s exhibit; and “Jt. Exh.” for joint exhibit. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

R Exh. 13 is a policy from 2023, but Dr. Dr. Cheng provided uncontroverted testimony that the policy

The Accreditation Council⁴ for Graduate Medical Education (ACGME) oversees graduate medical education (GME) for all institutions. ACGME sets the baseline standards for a medical school to be accredited. ACGME also sets minimum standards for program specialties, including psychiatry. A state or an institution may implement stricter standards but may not implement more lenient standards. The Graduate Medical Education Committee (GMEC), chaired by the designated institutional officer (DIO), ensures accreditation standards are met and must review policies pertaining to GME annually. The number of residents a program may have is determined by ACGME, taking into account several factors. Any increase must be justified and approved by ACGME. (Tr. 376–378, 423–424.)

During the relevant time, Jason Cheng was the residency training director for Meharry’s Department of Psychiatry and Behavioral Sciences (psychiatry department).⁵ Lloyd Williamson was the chair of the psychiatry department.⁶ Rashida Elliott was the director of GME from November 2022 to June 2024, and the assistant DIO until January 2025.⁷

Dr. Cheng led the admissions committee for choosing residents for Meharry’s psychiatry residency program. For residents entering the program for a year other than PGY-1, the process was less formal, consisting of Dr. Cheng running the candidates by the GMEC and collaboratively deciding whether to interview a candidate. (Tr. 435.)

Charging Party Joshua Anthony graduated from medical school in 2015. Dr. Anthony received an offer from Dr. Williamson for a PGY-1 position in psychiatric residency at Meharry on April 15, 2019.⁸ (R Exh. 2.) He signed a one-year PGY-1 contract running from July 1, 2019, to June 30, 2020. Dr. Anthony started his residency on July 1, along with 5 other residents.⁹ He signed an agreement of reappointment to a PGY-2 position for the academic year July 1, 2020, to June 23, 2021, and completed 2 years of residency at Meharry. During his first year, Dr. Anthony was the psychiatry resident representative on the house staff association, and during his second year he was elected president. In this role, he advocated on behalf of the residents and voted on policy matters.¹⁰ (Tr. 27–28, 253.)

B. August 2020 Tweets and Other Activity

was in effect during the relevant time. (Tr. 441.)

⁴ The transcript erroneously reflects “counsel” instead of “council.”

⁵ Dr. Cheng was on a hiatus from July 2021 to June 2022, during which time Dr. Williamson was the acting residency training director.

⁶ At the time of the hearing, Dr. Williamson no longer worked for Meharry.

⁷ At the time of the hearing, Elliott no longer worked for Meharry.

⁸ Dr. Williamson, at the time, was the acting residency program director and the chair of the psychiatry department.

At the time of the hearing, Dr. Anthony was a third-year resident at Creedmoor Psychiatric Center in Queens, NY.

⁹ Between medical school and residency, Dr. Anthony reapplied to residency programs and obtained his MBA in healthcare management. (Tr. 160.) Dr. Williamson interviewed him and offered him a spot as a PGY-1 in Meharry’s psychiatric residency program. (Tr. 165.)

¹⁰ At Meharry, all residents are members of the house staff association.

In August 2020, Dr. Anthony was working a “night float” rotation. (R Exh. 8.) On August 14, 2020, Dr. Anthony, using the handle @thetherapydoc, posted tweets during his work shift stating¹¹:

As the POD [psychiatrist on demand] and a resident I shouldn’t have to be harassed ER attending because I’ve deemed a patient to be grossly intoxicated and you don’t want to hold him a little longer until he’s a little more sober so I can come back and do a proper evaluation for admission. #PsychTwitter

...

He’s either drunk or delirious. Take your pick. Either way I can’t admit him to the psych ward right now. #PsychTwitter

...

I literally got lectured, on how I should accept the patient just because he’s been medically cleared. Mind you, the patient is grossly intoxicated, and has a KNOWN hx of complicated withdrawals with seizures.

(GC Exh. 24.) Dr. Williamson texted Dr. Anthony the same day, stating she had seen the tweet and instructing him to address the matter with the psychiatry attending physician that day. Dr. Anthony reported back that he had discussed the situation with the psychiatry attending, and expressed some frustrations over his interactions with the ER attending the past 2 nights.¹² (GC Exh. 25.) Dr. Williamson asked Dr. Anthony if he thought anything else needed to happen regarding the situation with the ER attending and offered to help him. Dr. Anthony said he was unsure of what steps to take, and Dr. Williamson encouraged him to speak with Dr. Cheng. (R Exh. 9.) With Dr. Williamson’s encouragement, Dr. Anthony filed a complaint against the ER attending, but no evidence of mistreatment was found.¹³ (Tr. 237–238.)

On August 19, 2020, Dr. Anthony tweeted, during his shift:

Tonight I was consulted by the same ER attending from before for a patient who I was told wanted alcohol detox. So I interview the patient. First off, the patient told me he drove over 100 miles to be examined because of his abdominal pain. He actually wants to see medicine.

...

¹¹ The posts were on X, formerly known as Twitter.

¹² Dr. Anthony mentioned to Dr. Williamson that he wanted to have a good working relationship with “him” because of his (Dr. Anthony’s) role as house staff association president. (GC Exh. 25.)

¹³ The ER Dr. was identified as Dr. Akatue. (GC Exh. 25.) In November 2020, Dr. Anthony, as house staff association president, had sent a letter to Richmond Akatue, the associate Dean and designated institutional officer (DIO) for graduate medical education, about the residents’ concerns regarding the availability of food in the resident lounge. (Tr. 254; R Exh. 9.) This is not alleged to be protected concerted activity in the complaint and there are no allegations that Dr. Akatue engaged in retaliation.

Patient has a hx of ptsd, alcohol use disorder, MOD, alcoholic hepatitis, pancreatitis, ascites. He has been hospitalized several times due to alcohol withdrawal but was admitted to the ICU or medicine floor during his last 5 hospitalization (sic) because of complicated withdrawals.

...

I work up the patient. He has reportedly reduced his alcohol intake from almost 30 cans of beer/day to about 2-3 per week. He drank 4 beers on the way to the ER, but his repeated last drink before that was last week. No SI/HI/AVH. BAL: 399 Alk Phos :320, ALT: 159, AST:33, K+:2.6

...

All things considered: clinical presentation, GI disease secondary to years of alcohol abuse, complicated withdrawals requiring recent medicine floor admissions, BAL>300, and CMP abnormalities I'm pretty sure we won't be able to manage him on the psych ward.

...

So I run the case by my psychiatry attending who agrees with my assessment. So I inform the ER attending. I specifically start by saying "I spoke with my attending" so there would be no confusion. We aren't able to accept this patient in the floor. He immediately asks why? I

...

So I attempt to tell him my assessment... waste of time. When I begin talking about labs he says, "that's for me to worry about not you." And then he asks again, so why are you not accepting him? I talk about his GI etiology and hx of complicated seizures. It didn't matter.

...

He replies, your decision isn't sound. So I offer to ask my attending to call him if he doesn't agree. He tells me to tell my attending that the decision we are (sic) making is in our own interest and not the best interest of the patient. I just said ok.

...

Mind you. we can't even admit patients to the ward if their BAL is over 300. That means he would have been sitting in the UCC/ER FOR HOURS! How is that in the better interest of the patient than medicine being able to admit him immediately and manage him properly? #PsychTwitter

...

Maybe it's because I'm a resident and he'd rather dump on me than consult the on call medicine attending. But sir... I'm not stupid. Psychiatry is actual science and I still have to follow protocol. Don't consult me if you don't actually want my recommendation.

#PsychTwitter

Another user replied, “Sounds like it’s the alcohol and not his mental. I’m no doctor yet though.”¹⁴ Dr. Anthony replied:

Don’t get me wrong, we do manage substance withdrawal. But since we aren’t a medical unit, we can’t manage severe cases of withdrawal. For those cases they have to go to medicine or the ICU

...

Also realize that once I’m consulted there is no benefit for me by not admitting the patient. I still have to write the same long note

(GC Exh. 26; Tr. 237.) After this series of tweets, Dr. Williamson called Dr. Anthony, asked him the reasons for his post, and asked him to be mindful about what he posted because individuals may make inferences about Meharry based on his posts. (Tr. 122.) In a follow-up text on August 22, Dr. Anthony said another reason for his post was that he had previously posted about how other specialties act like psychiatry is not science-based, and these were examples of it. He said he would exercise more discernment when it comes to postings that could reflect negatively on the program. Dr. Williamson thanked him, told him people can rally around non-specific discussions of those negative themes, but it was harder when things were institution or program specific. (GC Exh. 27.)

Dr. Williamson sent Dr. Anthony an email on September 11, 2020, noting her previous concerns about how his tweets might be interpreted, and that this concern persisted on a more recent tweet. She asked him to meet with her and Vanessa Pugh, who was assisting the department with social media presence. Dr. Williamson concluded by thanking Dr. Anthony for moving the department toward a greater social media presence. (R Exh. 9.) At some point, Dr. Anthony blocked Dr. Williamson from his social media. (Tr. 239.)

Dr. Anthony sent an email expressing an interest in fast-tracking to a child psychiatry fellowship to Dr. Cheng and Dr. Williamson in December 2020. Dr. Williamson advised him to join the AACAP, and Dr. Anthony responded he would register with the AACAP right away.¹⁵ (Tr. 619–620; GC Exh 46.)

On January 27, 2021, Dr. Anthony emailed a copy of Howard University’s collective-bargaining agreement to the house staff. (GC Exh. 9.) On April 9, 2021, Dr. Anthony emailed the house staff informing them of the results of a survey he had conducted regarding union authorization cards.¹⁶ (GC Exh. 10.)

¹⁴ The record does not establish that this user was another Meharry resident or has any connection to Meharry.

¹⁵ AACAP stands for the American Academy of Child and Adolescent Psychiatry. Dr. Anthony also had verbal conversations about fast-tracking. The specific content of these discussions, any steps taken, and dates, however, are not a matter of record. The record does not establish that Dr. Anthony followed up with Dr. Williamson’s suggestion or otherwise took steps to pursue the fast-track option.

¹⁶ The complaint does not allege that the Respondent violated Section 8(a)(3), and these two emails are not alleged to be protected concerted activity.

C. Non-Renewal of Dr. Anthony's Contract and Subsequent Events

To progress to the PGY-3 year, PGY-2 residents needed to submit a passing USMLE step 3 score by January of the PGY-2 year. As of January 2021, Dr. Anthony had not submitted a passing step 3 score. Dr. Cheng sent a letter to Dr. Anthony on April 15, 2021, notifying him that they were nearing the end of the academic year, his step 3 score was still pending, and if he did not show a passing score, Meharry may not be able to renew his contract for his PGY-3 year. (R Exh. 4.) Dr. Anthony filed an appeal with Meharry's ad hoc committee, comprised of individuals from different programs. On June 9, 2021, the committee upheld the non-renewal, but recommended a three-month extension, from June 30–September 30, to present a passing step 3 score. If Dr. Anthony did not submit a passing score by September 30, 2021, his contract would be non-renewed with no further appeal.¹⁷ (R Exh. 5.) The ad hoc committee's recommendation was accepted, and Dr. Anthony was provided with a three-month extension to submit a passing step 3 score.¹⁸ (R Exh. 6.)

Dr. Anthony did not submit a passing score by September 30, 2021. (Tr. 181.) On October 5, 2021, Kimberly Perkins Davis, the assistant DIO for GME, informed Dr. Anthony that, because he was not in compliance with USMLE Step 3 policy, Meharry was not offering him a new contract for his third year. (GC Exh. 2.)

Following his departure from Meharry, Dr. Anthony requested his resident file in October 2021.¹⁹ In February 2022, Dr. Anthony received his summative evaluation, which listed the credits he had received for various rotations. ACGME requires a summative evaluation for every resident who leaves a program, which must be provided to a requesting institution within 30 days. The program director is tasked with creating the summative evaluation and does so with the input of the clinical competency committee. The clinical competency committee is comprised of faculty who work with the resident to provide feedback and advise the program director about the resident's performance.²⁰ Residents generally review the information so that they know and understand what will be on their summative evaluation, but it is not contestable, debatable, or appealable. (Tr. 389–391, 416, 469, 499; GC Exh. 31.) Dr. Cheng was on extended leave when Dr. Anthony left Meharry, so Dr. Williamson created and signed Dr. Anthony's summative evaluation as interim program director on February 7, 2022. Dr. Anthony did not have the opportunity to review the summative evaluation before receiving it. (Tr. 141–142.)

¹⁷ Dr. Anthony believed the ad hoc committee's composition was not in line with the handbooks. (Tr. 176–177.) The composition of the committee is not part of the complaint.

¹⁸ Dr. Anthony filed charge 10-CA-280135, regarding his non-renewal, on July 19, 2021. It was dismissed and Dr. Anthony's appeal of the dismissal was denied on November 16, 2021, citing insufficient evidence of that Meharry had animus against Dr. Anthony's protected activity or retaliated against him because of it. (GC Exh. 34 (c).)

¹⁹ This was the subject of charge 10-CA-292233, which is not part of this complaint.

²⁰ The department of psychiatry residency training manual, section 4.2, describes the clinical competency committee, including its purpose, responsibilities, and membership. (GC Exh. 35.)

D. Settlement Agreement and Suspension of Alumni Email Account

Dr. Anthony filed charge 10-CA-285432 on November 1, 2021.²¹ As part of a settlement agreement, which the Regional Director for Region 10 approved on June 17, 2022, Meharry was required to email notices to residents who worked between October 1, 2021, and June 16, 2022, and to provide a neutral reference for Dr. Anthony. The notice, typical of Board notices, informed employees of their rights under the Act, stated that Meharry would not interfere with those rights, would not refuse to provide letters of recommendation based on filing a charge with the Board or cooperating with Board proceedings, and would provide Dr. Anthony with a letter of recommendation. On June 30, 2022, the Respondent emailed 123 residents the Notice to Employees. (GC Exh. 3; R Exhs. 17, 18; Jt. Exh. 2.) The neutral reference provision stated, in relevant part:

NEUTRAL REFERENCE - The Charged Party agrees that any phone calls or emails it receives from third parties, including Respondent's Graduate Medical Education Committee, concerning Charging Party's time or performance as a resident at Charged Party will be referred to former Program Director Dr. Jason Cheng for response. If former Program Director Dr. Jason Cheng is unavailable or no longer employed by Charged Party, the Charged Party will respond to the inquiry by sending the Letter of Support signed by former Program Director Dr. Jason Cheng. This Letter of Support is dated June 16, 2022, and has been approved by Charging Party.²²

The agreement provided Meharry with 14 days to remedy any noncompliance. (GC Exh. 3.) Dr. Anthony asked some of the residents that had graduated at the end of June 2022 if they had received the notice email, and some reported that they had not. (Tr. 34.)

On July 1, 2022, Dr. Anthony sent emails from his Meharry alumni account to multiple recipients, addressing them as "House Staff" in the salutation, informing them that they did not receive transparency in the nature of the notice or the settlement agreement.²³ He attached the notice from the settlement agreement and wrote:

During my time as president of house staff, I advocated on behalf of the resident body on numerous issues and even managed to help to push some positive change, such as the first residency salary increase in almost 10 years. However, many of our requests were met with resistance. Often, decisions were made without resident input and with a complete lack of transparency. We challenged GMEC and the administration on many of these issues because of the adverse effect they were having on our training and overall

²¹ The charge underlying the settlement agreement alleged that Dr. Williamson did not agree to provide a letter of support for Dr. Anthony.

²² The referenced letter of support appears at GC Exh. 4.

²³ Dr. Anthony sent two emails with different recipients because the system could not send to more than a certain number of recipients at once. (Tr. 37.) Though the salutation in the email is to the house staff, Dr. Anthony testified he sent his emails to the people to whom Meharry emailed the notice pursuant to the settlement agreement, as well as some residents who had told him they never received the notice. (Tr. 286.)

wellness. Because of this, it became apparent that we needed to unionize, and we began the process of doing so.

One of the biggest issues that we have faced as Meharry residents is retaliation. It can take many different forms in our training but we know it when we experience it. The protections that residents should be guaranteed in the house staff policy are not adequate or not followed at all. From my experience, the grievance process and ad-hoc committees are little more than pretense. During my training, I began to experience heavy retaliation as I am sure many of you have. I attempted to address my concerns with the institution, but after they were ignored, I filed my concerns with the Equal Employment Opportunity Commission and the National Labor Relations Board.

After a thorough investigation, the National Labor Relations Board sided with my charge of retaliation and issued terms of a settlement agreement that Meharry could agree to or go to court. I helped draft the settlement terms and I had to approve them. One of the settlement terms is that Meharry would have to post the notice in the resident's lounge and email the notice specifically to all of the residents, informing you that you have the legal right to unionize and file complaints/charges and that they (Meharry) WILL NOT retaliate against you or refuse to withhold recommendations for your doing so. They will also be providing me with what I requested per the last line of the notice. I didn't receive any money from this settlement, as my primary goal was to ensure that what happened to me would not happen to Meharry residents again.

My attorney told me that she has only seen an organization be forced to post an NLRB notice five times in her entire career. It's a big deal and it's a huge win for Meharry residents. Resident mistreatment is a national problem and that's why residencies across the country are successfully unionizing. As residents, you may be vulnerable, but you are not powerless. You have leverage, and when an institution won't respect your rights and humanity, there are organizations and agencies that will make sure those rights are respected. Being grateful for the privilege of being trained at a historic institution doesn't mean you shouldn't hold the institution to high standards. Continue to demand transparency. More than anything, don't let anyone take your integrity or human dignity from you. You're more than a resident

(GC Exhs. 5, 6.) After Dr. Anthony contacted the NLRB asserting deficiencies in the notice distribution, the Respondent sent a second email on July 12, 2022, with the Notice to 48 additional residents who had graduated and had not been included in the June 30 email. (Jt. Exh. 2; GC Exh. 8; R Exh. 18; Tr. 287).

During the relevant time, Meharry maintained a policy regarding acceptable use of information technology (IT) resources, which contained the following provisions:

- Subsection 3. Users WILL NOT:
[...]

- (k) Send email chain letters or mass mailings for purposes other than official University business;

[...]

- Subsection 4. Rights of Meharry Medical College:

- (a) The College reserves the right to access, monitor, review, terminate, and release the contents and activity of an individual User's accounts as well as of personal Internet accounts used for MMC business.

(GC Exh. 14.) Meharry's alumni email account creation and retention policy states that students who have a conferred degree as defined by the Office of the Registrar are eligible for an alumni email address, and that alumni email accounts are a privilege, not a right. The policy further provides that any violation of the college's technology policies may result in termination of account privileges. (Id.) The reason for prohibiting mass emails and chain letters is to prevent clogging up inboxes with things unrelated to work. (Tr. 338.) The investigation process upon a report of misuse of a Meharry email account does not differ for alumni and employee accounts. (Tr. 351.)

Mark Smith, Meharry's Vice President of Human Resources, was informed by someone in Meharry leadership that several residents had complained about Dr. Anthony's email.²⁴ The email came during new resident orientation, and it had reportedly made some of the new residents uncomfortable. (Tr. 340–341.)

On July 7, 2022, Dr. Anthony received a message notifying him that his Meharry alumni email account had been disabled.²⁵ (GC Exh. 7.) Dr. Anthony had used his Meharry alumni account to apply to residency programs and for other professional correspondence. (Tr. 40.) Dr. Anthony had sent and received emails to large groups of residents in the past without incident. (Tr. 44.) Other individuals had used Meharry accounts to send mass emails about apartment rentals and a survey on professional wellness and burnout. (GC Exhs. 11–13.)

E. December 2022 Changes to Recruitment

Rashida Elliott began working at Meharry as director of GME in November 2022. At the time, Meharry as a whole had been placed on probation by ACGME, along with some programs, including the psychiatry residency program.²⁶ If an institution is on probation twice, ACGME can cancel individual programs or close the medical school. Elliott reviewed Meharry's programs and policies to see where they could make improvements to become compliant and have their probation status lifted. (Tr. 361.) One of ACGME's concerns was the quality of residents Meharry was bringing into its program. Elliott elaborated:

²⁴ The person who informed Smith of the complaints is not identified.

The transcript references a Dr. Conway, both regarding this exchange, and regarding a 2020 email Dr. Anthony wrote contained at R Exh. 10 about the availability of food in the resident lounge. (Tr. 254, 341.) The email was to Dr. Richmond Akatue, not Dr. Conway, so it appears this reference was an error. (R Exh. 10.)

²⁵ The decision to suspend Dr. Anthony's alumni email account came from Meharry's legal department. (Tr. 343–344.) Dr. Cheng was not involved in the decision and was unaware of it. (Tr. 476.)

²⁶ Both the institution and the psychiatry residency program eventually were taken off probation and fully accredited.

So when they came and talked to us and had a discussion and reviewing everything and talking to everyone, one of their concerns was our recruitment and what we are doing in regards to recruitment, and how are we recruiting, and what residents, or applicants we are looking to recruit, because they're not either staying or they're not finishing the program as they should finish, or they're not passing the boards on time.

(Tr. 364.) Elliott met with Meharry's president, DIO, program directors, and department chairs and conveyed the importance of changing recruitment requirements. Elliott suggested specific changes, which were voted on and approved by the GMEC. One of the changes was capping the time between medical school and residency to 3 years because of the rapid pace at which things change in the medical field. In addition, attempts to pass the step 1 and step 2 exam were capped at 2 apiece. (Tr. 364–368.)

On December 12, 2022, DIO Michelle Nichols sent a letter to Meharry's program directors, residency coordinators, and GME leaders notifying them that Meharry's status had improved to continued accreditation with warning. Nichols noted that a site visit would occur in August 2023 to ensure Meharry had made improvements. She set forth new applicant eligibility criteria, effective immediately, which provided in relevant part:

Medical School Graduation date no later than 3 years prior

...

Any agreement of appointment or offer letter will be contingent upon passing the USMLE Steps 1 and 2 or COMLEX-USA Level 1 and 2 CE. USMLE/COMLEX attempts should be limited to 2 attempts

(R Exh. 12.) These criteria applied to all applicants, including transfers and those seeking to return to the program. (Tr. 425.) Meharry implemented a policy regarding the USMLE Step 3 on February 13, 2023. The policy states, in relevant part, that residents with more than 3 attempts to pass step 3 will not have their contracts renewed.²⁷ Meharry implemented its resident/fellow eligibility, selection, and appointment policy, effective July 3, 2023. It does not recite the stricter eligibility criteria for years since medical school graduation and step 1 and 2 exam attempts depicted above. Instead, it sets forth the minimum resident and fellow eligibility criteria for the ACGME institutional requirements.²⁸ Elliott testified it was separate from the more stringent internal documents that stressed the importance of the internal requirements. Applicants did not have access to Meharry's internal requirements.²⁹ (Tr. 394–395, 400; R Exh. 14.)

Elliott also made recommendations regarding the number of psychiatry residents Meharry should accept. The maximum number of psychiatry residents a program can have is determined

²⁷ This policy does not address re-appointment.

²⁸ The Respondent also implemented a policy on adverse academic decisions that does not cover re-appointment. (R Exh. 15.)

²⁹ The July 3, 2023, policy states that programs may establish additional selection criteria, and that specific criteria "must be published for applicants to review as part of the required program-level policy on eligibility and selection." (R Exh. 13.)

by ACGME. (Tr. 376.) Meharry’s psychiatry residency program was capped at six residents per year. For incoming students after the 2022-2023 academic year, the number of residents in the psychiatry program was reduced to four based on the availability of local training sites.³⁰ Starting in 2023–2024, if a resident from a PGY class that had been capped at six left the program, they were not replaced because the goal was to get each class to four residents. (Tr. 379–380, 413.)

For the 2022–2023 year, there were six PGY-1 residents, six PGY-2 residents (a seventh was listed as “dismissed”), four PGY-3 residents (a fifth was listed as “dismissed”), and three PGY-4 residents. (GC Exh. 36.) For the 2023–2024 year, there were three PGY-1 residents, four PGY-2 residents, six PGY-3 residents, and four PGY-4 residents. (GC Exh. 37.)

F. March 2023 Request to Return to Meharry

Dr. Anthony took the step 3 test in January 2023, his fifth attempt, and received a passing score in March 2023.³¹ (Tr. 59, 183.) According to Meharry’s department of psychiatry residency training manual for the 2020–2021 academic year,³² psychiatry residents who wish to return to the program must send the residency coordinator an application that includes:

1. An application letter from the resident which includes reference areas of the resident’s performance in clinical, attitudinal, emotional or academic areas that may have been identified prior to the resident’s departure (with documentation from primary source verification)
2. A letter of recommendation from a member of the Department of Psychiatry and Behavioral Sciences
3. A letter of endorsement from the Residency Training Director

Once the documentation is submitted to the residency coordinator, the applicant is interviewed by a panel. (GC Exh. 35; Tr. 481.)

On March 16, 2023, Dr. Anthony emailed Dr. Cheng, the residency training director, informing him that he had passed the step 3 exam, and stating that he was seeking to complete his psychiatry residency training. He requested to meet with Dr. Cheng to discuss returning to Meharry’s program. Dr. Anthony did not hear back, so he followed up with a phone call to Dr. Cheng and a March 22 email. Dr. Cheng responded by email on May 18, informing Dr. Anthony that his previous emails had gone into his junk folder, and that there were no PGY-3 positions available. Dr. Cheng suggested that Dr. Anthony direct future inquiries to Meharry’s GME office, as that office had final authority over reinstatement. (GC Exhs. 15, 16.) Dr. Cheng testified that anytime someone wants to join mid-residency, even if the previous residency was at Meharry, the GME had to help determine whether the candidate meets eligibility requirements and must approve proceeding with an interview. (Tr. 444–445.)

³⁰ Meharry previously had residents training in Oklahoma City and Colorado, which ACGME said was not appropriate. (Tr. 379.)

³¹ The limit of attempts to pass the step 3 test changed from 6 to 4 in 2022. Dr. Anthony requested and received an exception to allow him to take the test a fifth time. (Tr. 184.) He received his medical license from the State of Tennessee in May or June 2023. (Tr. 272.)

³² Dr. Cheng and Dr. Williamson wrote the manual.

A resident³³ was reinstated to the psychiatry department in November 2020 after having initially not passed the step 3 exam by the deadline. They subsequently submitted a passing step 3 score, but were not initially readmitted because the program was full. Once there was an opening, the resident received an offer of reinstatement and returned to Meharry. (GC Exhs. 18, 19; Tr. 65, 69, 454–457.) On May 19, 2023, Dr. Anthony emailed Dr. Cheng and asked if the process had changed, based on his belief that this reinstated resident had communicated with Dr. Cheng and Dr. Williamson regarding their reinstatement. Dr. Anthony also requested contact information for the specific person in GME he should contact regarding reinstatement.³⁴ (GC Exh. 17.) His understanding of the reinstatement process was that the resident interested in returning would contact the program director directly, and then after some discussion between the resident and the program director, the program director would contact the graduate medical education committee (GMEC) to discuss whether the resident could return to the program. Dr. Anthony observed this during his participation on the GMEC. (Tr. 72.)

Another resident had been non-renewed in 2020 for not submitting passing step 3 scores, had expressed an interest in returning, but was not permitted to return based on the number of times they failed the step 3 exam. A different resident had been non-renewed in 2021 for not submitting passing step 3 scores, was not permitted to return to Meharry, and transferred to another program. Another resident received a non-renewal letter for failing to submit a passing step 3 score. Meharry provided a 3-month extension, the resident submitted a passing score before its expiration, and was permitted to remain in the program. Another was non-renewed for not submitting passing step 3 scores and had not retaken the step 3 exam. (Tr. 212–213, 450–454.) Dr. Anthony believed a different resident was non-renewed for failing to submit a passing step 3 score in 2018. (Tr. 216.)

G. Harlem Hospital Application and Reference from Meharry

On June 15, 2023, Dr. Anthony applied for a PGY-3 position at Harlem Hospital that had been posted on a platform for residency positions called “resident swap.”³⁵ (GC Exh. 20; Tr. 76.) Dr. Uchechukwu Nnamdi was the residency program director for the psychiatry residency program at Harlem Hospital and Ann Callendar was the program coordinator. When considering applicants for openings beyond the PGY-1 year, Dr. Nnamdi’s practice is to speak with the applicant’s previous residency program director and then set up a committee to interview the candidate to see if they would be a good fit. (Tr. 522–523.)

Dr. Anthony had a brief discussion with Dr. Nnamdi on July 7, 2023, thought it went very well, and was anticipating a second interview the following week, after Dr. Nnamdi spoke with Dr. Cheng.³⁶ (Tr. 77–78.) According to Dr. Nnamdi, he reached out to Dr. Anthony and

³³ This resident as well as other residents are identified in sealed testimony. Names and other identifiers are not mentioned for privacy considerations and to ensure compliance with the Family Educational Rights and Privacy Act (FERPA).

³⁴ Dr. Anthony did not believe Dr. Cheng responded to his May 19 email. (Tr. 75.)

³⁵ There was at least one other applicant. (Tr. 532, 547.)

³⁶ Dr. Anthony described the phone conversation as an interview, Dr. Nnamdi said it was not an interview.

explained that he needed to speak to his former residency program director before they could proceed with an interview. (Tr. 532, 538.) After speaking with Dr. Anthony, Dr. Nnamdi emailed Dr. Cheng, informed him he'd had a brief chat with Dr. Anthony, stated he would like to formally interview him the following week, and asked if they could discuss him or if Dr. Cheng could send an email outlining any concerns other than Dr. Anthony's step 3 results. (GC Exh. 39.) That same day, Dr. Anthony texted his friend and former co-resident, Dr. Paschal Emule, who was friends with the chief resident at Harlem Hospital. Dr. Anthony told Dr. Emule he had spoken with Dr. Nnamdi, and Dr. Emule said he would text his friend. (GC Exh. 40.)

On July 10, 2023, Dr. Anthony emailed Callendar, the program coordinator, and informed her that Dr. Cheng was likely to be out of the office on paternity leave. Dr. Anthony provided Callendar the number for the outgoing chief resident in the event Dr. Nnamdi wanted to speak with him in Dr. Cheng's absence. Callendar said she would pass that along and asked if Meharry had an associate program director. Dr. Anthony responded that the associate program director had not been at Meharry during Dr. Anthony's training and was not familiar with him. On July 11, Callendar thanked Dr. Anthony, told him to be patient a little longer, the position was still open, and the start date would not likely be before August 1. (GC Exh. 20.)

On July 11, 2023, Dr. Cheng emailed Dr. Nnamdi, apologized for his delay in responding, informed Dr. Nnamdi that he was on paternity leave returning July 24, and conveyed that Dr. Williamson, the acting program director, could provide information in his absence. That same day, Dr. Nnamdi emailed Dr. Williamson asking if they could discuss Dr. Anthony the following morning. (GC Exh. 39.) Dr. Williamson and Dr. Nnamdi spoke on the phone. Dr. Williamson gave mostly positive feedback about Dr. Anthony but mentioned he could have some challenges with authority figures. Dr. Nnamdi perceived the reference as neutral and planned to leave it up to the committee to decide if there were any issues. (Tr. 543–544.)

Dr. Anthony texted Dr. Cheng on July 25, 2023, to ask if Dr. Nnamdi had contacted him about the Harlem Hospital position. Dr. Cheng informed Dr. Anthony that Dr. Williamson had spoken with Dr. Nnamdi while Dr. Cheng was away. On July 26, Dr. Anthony emailed Callendar to follow up and to inform her that Dr. Cheng was back from leave. He asked her to update him on the next steps. (GC Exh. 21.) On July 26, Dr. Anthony texted Dr. Emule to ask if he (Emule) could speak with the chief resident or Dr. Nnamdi, noting that Dr. Nnamdi had spoken with Dr. Williamson. Dr. Emule responded that he had already spoken to the chief resident, who did not think the conversation went well but they would not tell him why.³⁷ (GC Exh. 40.)

Dr. Anthony followed up with Dr. Nnamdi on August 2, 2023, stating that, per their discussion, he had hoped to interview with him, the associate program director, and the chief resident. Dr. Anthony asked for feedback on Dr. Nnamdi's discussions with Meharry and inquired about whether he was still being considered. Dr. Nnamdi responded the same day, apologizing for the delay and stating he had been away. Dr. Nnamdi told Dr. Anthony that they were no longer filling the PGY-3 position due to changes in the program.³⁸ (Tr. 533–534; GC

³⁷ Dr. Emule assumed the conversation did not go well because Dr. Anthony and Meharry did not have a good history. (Tr. 598.)

³⁸ Dr. Nnamdi explained that the psychiatry department had decided to hire an additional PGY-3 resident to assist with night rotations, because the current PGY-3 class was small and he was concerned

Exh. 22.) Nobody was offered the position. (Tr. 547.) In April 2024, the chair of Harlem Hospital’s psychiatry program, Zafar Shariff, filled a PGY-3 position.³⁹ (Tr. 575.)

Dr. Anthony had concerns that Dr. Nnamdi had spoken with Dr. Williamson, because he believed she was trying to undermine his efforts to move forward. (Tr. 82.) Dr. Williamson had previously told Dr. Anthony she could not give him a good recommendation, resulting in the settlement agreement. Dr. Anthony was also concerned because, according to the settlement agreement, the only person allowed to speak to a potential employer was Dr. Cheng. (Tr. 110–111.) On August 8, 2023, Dr. Anthony emailed Dr. Nnamdi stating that he was disappointed, but he understood his decision. Dr. Anthony expressed his concerns that his professionalism was falsely cast in a negative light and stated his belief that the department at Meharry had a known history of retaliation. He noted his positive evaluations, stated that his interactions with Dr. Williamson were somewhat minimal, and expressed dismay as to why she would seek to impede his progress. Dr. Anthony discussed his work as house staff president and reiterated some of his accomplishments and accolades. He attached evaluations and comments from supervisors. On August 15, 2023, Dr. Anthony emailed Dr. Nnamdi the letter of recommendation drafted pursuant to the settlement agreement. (GC Exh. 22.)

On August 8, 2023, Dr. Anthony’s mother, Maria Anthony (M. Anthony) spoke in person with Dr. Williamson. (Tr. 290.) According to M. Anthony, Dr. Williamson told her she had conveyed to Dr. Nnamdi her belief that Dr. Anthony had not learned how to handle problems because of his Twitter posts. More specifically, Dr. Williamson said that even though Dr. Anthony had not mentioned names in his posts, anyone familiar with Meharry could tell who he was referencing given that it’s a small school, and that tweeting was not the way to handle problems. (Tr. 303–304.) M. Anthony also testified that in a phone conversation later that day, Dr. Williamson conveyed she had told Dr. Nnamdi that Dr. Anthony would not make a good resident because of the way he handled problems. (Tr. 306–307.)

H. 2024 Application for PGY-2 Position

Meharry was looking to fill one PGY-2 spot for the 2024-2025 academic year, bringing the total number of residents to 4. (Tr. 459.) Dr. Anthony saw a June 4, 2024, listing for the PGY-2 position on resident swap. The posting asked applicants to submit a cover letter, curriculum vitae, 3 letters of recommendation (including one from a psychiatrist and one from their program director), full scores listing all tests, including steps 1, 2, and 3, final medical school transcript, Dean’s letter, and in-training exam results if available. The announcement listed completing of a PGY-1 program in an ACGME accredited psychiatric residency program as a prerequisite. (Tr. 131; GC Exh. 28.)

about gaps in coverage. The PGY-4 residents, who had a larger complement, agreed to cover the night rotation, obviating the need to hire an addition PGY-3 resident. (Tr. 530, 533, 546.) Dr. Nnamdi testified that, to the best of his knowledge, his conversation with Dr. Williamson did not factor into the decision not to fill the position. (Tr. 547.)

³⁹ Harlem Hospital’s academic year is not a matter of record. It is unclear when the PGY-3 hired in April 2024 started.

On June 6, 2024, Dr. Anthony emailed Dr. Cheng expressing interest in the position and asking for the projected start date. He noted that Meharry had most of the requested documentation, and attached 4 letters of recommendation, his curriculum vitae, and a personal statement.⁴⁰ (GC Exh. 29.) Meharry’s attorney informed Dr. Anthony’s attorney that Dr.

Anthony was not eligible for the position due to the number of times it took for him to complete the step 1 and 2 exams. She explained that Meharry’s GME adopted a policy limiting step 1 and 2 attempts in 2022, and it applied to all incoming residents. She added that there was no path back to residency at Meharry for Dr. Anthony unless a court reinstated him. (GC Exh. 30; Tr. 462.) Dr. Anthony had failed the step 2 examination three times, which as of the date of his application exceeded Meharry’s limits on step 2 failures.⁴¹ (Tr. 496.)

I. Request to Change Summative Evaluation

On June 18, 2024, Dr. Anthony received an offer for a PGY-3 position at Creedmoor Psychiatric Center in Queens, NY, signed by Anca Amighi, the acting residency program director. Dr. Amighi’s letter notified Dr. Anthony of opportunities for rotations at New York Presbyterian Hospital/Columbia University Irving Medical Center (NYPH/CUIMC), but pointed out that Dr. Anthony would need to use his PGY-3 time to complete the ACGME requirements for child psych and geriatric rotations.⁴² Dr. Amighi offered to work with Dr. Anthony to get training at NYPH/CUIMC, but expressed regret that he may not be able to fulfill the requirements to obtain the certificate available from these institutions. (R Exh. 7.) Dr. Anthony wanted to obtain the certificate from NYPH/CUIMC, and believed he was missing credits for some of his rotations at Meharry. (Tr. 139–140.)

Dr. Anthony’s summative evaluation did not reflect any credits for geriatrics and reflected one month of FTE for forensic psychiatry, consistent with the rotation schedule. (GC Exh. 31; R Exh. 8.) Section 7.2 of the department of psychiatry residency training manual provides that residents are to keep logs reporting the patients they see, including gender, ethnicity, age range, and diagnosis, and submit them on the MyEvaluations website monthly. (GC Exh. 35.) Dr. Anthony did not submit his logs electronically, citing problems with the MyEvaluations website, so he kept a manual copy of his logs. (Tr. 291; GC Exh. 44.)

Generally, Meharry residents worked dedicated geriatric rotations.⁴³ A geriatric rotation could occur during any year of residency. (Tr. 474.) Because of COVID-19, Meharry’s geriatric rotation site stopped taking residents. Some residents who were fast-tracking or who would be delayed in graduating by not doing a geriatric rotation entered into agreements to receive credit

⁴⁰ Dr. Cheng was not aware of Meharry having a full USMLE step 3 score report for Dr. Anthony. (Tr. 461–462.) Dr. Anthony was not informed items were missing from his application. (Tr. 288.)

⁴¹ Dr. Cheng testified that after the changes the GMEC implemented, he did not accept any resident who had failed the step 2 exam three times. (Tr. 496.) This testimony is unrefuted.

⁴² Dr. Anthony thought NYPH stood for New York Psychiatric Hospital, but I take administrative notice it stands for New York Presbyterian Hospital. See <https://www.nyp.org/locations/newyork-presbyterian-columbia-university-medical-center>; [New York Presbyterian/Columbia University Irving Medical Center](#).

⁴³ ACGME requirements for GME in psychiatry include “one month FTE of organized experience focused on areas unique to care of the elderly.” (R Exh. 16.)

for the geriatric rotation by meeting alternative requirements. The requirements included keeping track of the geriatric patients they had seen and completing an online geriatric psychiatry curriculum. Dr. Cheng did not recall discussing this alternative path with Dr. Anthony or entering into an agreement with him. (Tr. 469–470, 505.) Dr. Anthony recalled Dr. Cheng announcing, in a group setting, that there would be an alternative way of receiving credit for a geriatric rotation, but he did not explain how this would occur. Dr. Anthony kept logs just to be safe.⁴⁴ Dr. Anthony did not enter into an agreement with Dr. Cheng about an alternative arrangement for geriatric credit, and Dr. Anthony did not submit his geriatric logs, stating that nobody had asked to see them. (Tr. 148–149, 199–201, 284; GC Exh. 44.)

On July 30, 2024, Dr. Anthony emailed Dr. Cheng, asking him to update his summative evaluation to reflect missing credits for geriatrics and forensics. Dr. Anthony said he had logs for the geriatric patients he saw, and he was on the forensics unit for two months but only received credit for one. (GC Exh. 32.) Regarding forensics, Dr. Cheng had sent an email to Dr. Anthony and other PGY-2 residents on January 22, 2021, informing them that they would need to follow their teaching physician to a different unit. Dr. Cheng stated the new unit was the same size and had more forensic patients coming from jail, so the experience should be more varied. He added that unlike Middle Tennessee Mental Health Institute’s (MTMHI’s) dedicated forensic units, there should not be a higher risk of violence compared to the old unit. The residents worked in this unit for the months of February and March 2021. (GC Exh. 45; Tr. 617–619.)

Dr. Cheng responded on August 1, 2024, that he was unable to change the summative evaluation, noting that Dr. Williamson was the acting program director at the time, and Dr. Anthony would need to do the geriatric psychiatry rotation at his new program. Dr. Anthony replied on August 2, expressing that Dr. Williamson was not the acting program director while he was a resident, and stating that because Dr. Williamson was no longer with Meharry, the responsibility to change his summative evaluation fell to Dr. Cheng. Dr. Anthony reiterated that he had logs for geriatric patients and documentation of his time in the forensics unit. (GC Exh. 32.)

Dr. Anthony also emailed James Hildreth, Meharry’s president, on August 6, 2024, asking for his intervention regarding his issues with the psychiatry department.⁴⁵ Dr. Anthony expressed his belief that Dr. Williamson was retaliating against him, and that since her departure the department continued to hinder his efforts to obtain information required for him to receive credits he earned. Dr. Anthony outlined his concerns in detail and appealed to Dr. Hildreth to intervene. Dr. Anthony sent a follow-up email on August 13, reiterating his concerns and requesting attention to them. (GC Exh. 33.) Dr. Hildreth did not respond. (Tr. 147.)

Having received no response from his August 2 email to Dr. Cheng, Dr. Anthony emailed Dr. Cheng again on August 13, reiterating his request, expressing his frustration, and informing Dr. Cheng that if he did not respond, Dr. Anthony would contact the ACGME and the NLRB. On August 28, Dr. Cheng emailed Dr. Anthony that his response remained the same. (GC Exh. 32.)

⁴⁴ Keeping logs was required under section 7.2 of the department of psychiatry residency training manual. (GC Exh. 35.)

⁴⁵ Two other individuals were cc’d on the email.

Dr. Cheng did not give Dr. Anthony retroactive credit for geriatrics because he did not do the geriatrics rotation. Dr. Cheng testified that there was no minimum time requirement for forensics. (Tr. 466.) At Meharry, the forensic experience is considered part of the six-month inpatient psychiatry rotation, and Dr. Williamson decided to designate one month of that rotation for forensics with the rest designated as inpatient psychiatry. (Tr. 477.)

Dr. Anthony did not do a dedicated geriatric rotation. For the 2020–2021 academic year, Dr. Anthony’s PGY-2 year, the rotation schedule showed two PGY-4s with two months of geriatrics, and one PGY-4, one PGY-3, and one PGY-2 with one month of geriatrics. For the 2019–2020 academic year, Dr. Anthony’s PGY-1 year, the rotation schedule showed one PGY-4 with a month of geriatrics, and one PGY-3 and two PGY-2s with two months of geriatrics.⁴⁶ (R Exh. 9.)

J. Dr. Anthony’s Board Charges

Dr. Anthony has filed numerous Board charges, as follows:

Charge Number	Date	Subject/Allegation	Disposition or Complaint Paragraph Number
10–CA–280135	July 19, 2021	Non-renewal of contract	Dismissed and dismissal upheld
10–CA–285432	November 1, 2021	Refusal to provide letter of support	Settlement Agreement (GC Exh. 3)
10–CA–292233	March 14, 2022	Resident file request	Withdrawn
10–CA–299029	September 29, 2023	Alumni email discontinued	¶¶ 10-14
10–CA–314858	March 27, 2023	Failure to hire/consider	¶¶ 15-17
10–CA–323732	August 11, 2023	Negative reference	¶¶ 18-20
10–CA–343539	June 3, 2024	Failure to hire/consider	¶¶ 21-23
10–CA–348275	August 14, 2024	Failure to update summative evaluation	¶¶ 24-26

Charges 10–CA–280135, 10–CA–285432, and 10–CA–292233 are not part of the instant complaint. (Jt. Exh. 1.)

⁴⁶ Dr. Anthony believed that a PGY-3 resident received credit for a geriatric rotation by submitting logs. It is not clear whether or not this resident entered into an agreement or took the online course previously referenced. (Tr. 198-201.)

III. DECISION AND ANALYSIS

A. Dr. Anthony’s Protected Activity

1. Board Activity

Under Section 8(a)(4) of the Act, it is unlawful for an employer “to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.” The phrase “otherwise discriminate” is broadly construed in order “to prevent the Board’s channels of information from being dried up by employer intimidation of prospective complainants and witnesses.” *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972), quoting *John Hancock Mutual Life Insurance v. NLRB*, 191 F.2d 483, 485 (D.C. Cir. 1951).

There is no question that Dr. Anthony engaged in Board activity, as his filing of the numerous charges described above demonstrates, and that he cooperated with Board proceedings. As discussed below, however, I find Dr. Anthony’s July 1, 2022, email was not Board activity.

2. Protected Concerted Activity

Section 7 of the National Labor Relations Act provides that employees have the right to engage in union activities and, in pertinent part, “the right to ... engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection” “Other mutual aid or protection” extends to employee efforts to improve terms and conditions of employment or otherwise improve their lot as employees.

“To be protected under Section 7 of the Act, employee conduct must be both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection.’” *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). The Board has held that activity is concerted if it is “engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself.” *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

Concerted activity also includes “circumstances where individual employees seek to initiate or to induce or to prepare for group action” and where an individual employee brings “truly group complaints to management’s attention.” *Meyers Industries*, 281 NLRB at 887. An individual employee’s complaint is concerted if it is a “logical outgrowth of the concerns of the group.” *Every Woman’s Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 310 NLRB 831 (1993), enfd., 53 F.3d 261 (9th Cir. 1995).

a. August 2020 Tweets

Complaint paragraph 8(a) alleges that in August 2020, Dr. Anthony engaged in concerted activities for the purposes of mutual aid and protection, by writing multiple public posts on his

personal X (formerly Twitter) account, detailing complaints he and others had about the working conditions experienced as a psychiatric resident for Respondent.

5 I find the Acting General Counsel has not met the burden to prove that Dr. Anthony's tweets constituted protected concerted activity. As to concertedness, the record lacks evidence that any other employee disagreed with the ER attending physician's determinations on how to administer care to certain patients on August 14 and 19, 2020, or that he was acting on behalf of any other employee by tweeting his disagreement, during his shift, regarding how the ER attending directed patient care, either in substance or manner. The evidence does not show that 10 Dr. Anthony initiated or sought to induce others to prepare for group action, that he was bringing a truly group complaints to management's attention, or that his tweets were a logical outgrowth of group concerns.⁴⁷ I therefore find his tweets were not concerted.

15 In addition, the tweets were not protected under Section 7. Dr. Anthony's complaints were not about improving "the interests of employees qua employees." *G & W Electric Specialty Co.*, 154 NLRB 1136, 1137 (1965). The Board has held repeatedly that employee concerns for the "quality of care" and the "welfare" of their patients are not interests "encompassed by the 'mutual aid or protection' clause." *Waters of Orchard Park*, 341 NLRB 642, 643 (2004), is instructive here.⁴⁸ In *Waters of Orchard Park*, a nurse and a certified nursing assistant 20 complained about the treatment of residents at the nursing home where they worked. The Board found they were not engaged in protected activity because their complaints "were concerned about the quality of the care and welfare of the residents, not their own working conditions." Dr. Anthony expressed his concern that the ER attending's medical decisions were not in the best interest of patient care. The complaints in both this case and *Waters of Orchard Park* concerned, 25 at their core, about decisions regarding patient treatment, not the conditions under which work was performed. The medical treatment of patients is undoubtedly the hospital's product. "In general, 'employee efforts to affect the ultimate direction and managerial policies of the business are beyond the scope' of Section 7." *Riverbay Corp.*, 341 NLRB 255, 257 (2004) (quoting *Lutheran Soc. Services of Minnesota*, 250 NLRB 35, 41 (1980)). The quality of the "product" is 30 among these managerial prerogatives that are "not encompassed by the 'mutual aid or protection' clause." 250 NLRB at 42.

As the Respondent points out, the tweets concerned a dispute between Dr. Anthony, a resident around six weeks into his second year of training, and an attending emergency room

⁴⁷ Dr. Anthony filed a complaint against the ER attending, but there is not evidence showing this complaint was concerted.

⁴⁸ See also *Lutheran Social Service of Minnesota*, 250 NLRB 35, 42 (1980) (concerted activity of employees of a home for troubled youth who complained about planned policy changes found unprotected, where the employees were found to be disturbed by decisions by management and a "perceived lack of competency of management which, in their view, threatened the 'quality of care,' 'the quality of the program,' and the 'welfare of the children.'"); *Good Samaritan Hospital & Health Center*, 265 NLRB 618, 626 (1982) (concerted activity of hospital's occupational therapists who complained about the management of the hospital's developmental learning program found unprotected, where the therapists were concerned with the "quality of the care offered by the program and the welfare of the children.")

physician regarding the proper course of medical treatment for patients.⁴⁹ Based on the foregoing, I find Dr. Anthony's tweets were not protected concerted activity.

b. July 1, 2022, Email

Complaint paragraph 8(b) alleges that Dr. Anthony engaged in protected concerted activity when, on July 1, 2022, he emailed employees a copy of the Notice to Employees from the settlement of NLRB charge 10–CA–285432, using his alumni email account provided by the Respondent to graduates of the Respondent's educational institution.

I find Dr. Anthony's July 1, 2022, email, detailed above, was protected concerted activity. This email reminded residents of their rights under the Act, referenced his previous advocacy for fair treatment, discussed steps the residents had taken toward unionizing, and encouraged residents to use their leverage to demand their rights are respected and to demand transparency. It was a logical outgrowth of his previous advocacy for residents when he was president of the house staff, and it encouraged employees to continue to act together to improve their lot as residents. See *Meyers II* and *Every Woman's Place*, above.

The Respondent's argument that Dr. Anthony was not an employee when he sent the email fails. A former employee, such as Dr. Anthony, is still considered an employee under Section 2(3) of the Act and retains full protection of the Act. *Redwood Empire, Inc.*, 296 NLRB 369, 391 (1989); *Little Rock Crate Co.*, 227 NLRB 1406 (1977). At the time of the email, July 1, 2022, Dr. Anthony had disputed Meharry's compliance with the settlement agreement's requirement to email the notice to all the covered residents, prompting him to contact the NLRB, which resulted in the Respondent sending a second email notice on July 12, 2022, to 48 additional recipients.⁵⁰ The Respondent asserts that Dr. Anthony's intent behind sending the email was purely personal. Whatever his intent, for the reasons described above, Dr. Anthony's email was protected concerted activity by its language. I find, therefore, that Dr. Anthony's July 1, 2022, email was protected activity.

⁴⁹ Dr. Anthony told Dr. Williamson that one of the reasons for his tweets was his belief that other specialties act like psychiatry is not science based. This reason was not communicated in the tweets and there is no evidence, in any event, that this concern was shared by another resident or other residents at Meharry. Nor is there evidence that any other resident shared in Dr. Anthony's complaints about the manner in which the ER attending treated them.

The Respondent asserts that Dr. Anthony is not credible based on inaccuracies on his LinkedIn account and his social media postings. (R Br. 19.) While the time spent in Meharry's residency program was inaccurate on Dr. Anthony's LinkedIn account, he explained this was not intentional. (Tr. 166; R Exh. 1.) Regarding Dr. Anthony's social media post that he was unemployed for 3 years because Meharry spread false rumors, the Respondent is correct that for 18 months of that time, Dr. Anthony had not passed the step 3 exam required to progress in his residency. I do not find this renders Dr. Anthony's entire testimony non-credible however, and at most it shows exaggeration on this point.

⁵⁰ While I agree with the Respondent that the more prudent approach, and the approach contemplated by the Board's procedures and the settlement agreement itself, would have been for Dr. Anthony to contact Region 10, there was not a confidentiality provision or any term of the settlement agreement that precluded his July 1, 2022, email. The Respondent has not asserted that Dr. Anthony's email contained language sufficiently egregious to have lost the Act's protection.

The Respondent correctly argues that Dr. Anthony’s July 1, 2022, email was not Board activity, as the distribution of the notice, and/or any determination that distribution was insufficient, and the appropriate remedy if so, is not left to individual Charging Parties. To find Dr. Anthony’s email constituted Board activity would undermine and render superfluous the Board’s established enforcement procedures for alleged noncompliance with settlement agreements and encourage unsanctioned private enforcement.⁵¹

B. Deactivation of Alumni Email Account

Complaint paragraphs 10–14 allege that by deactivating Dr. Anthony’s alumni email account on July 7, 2022, the Respondent disparately enforced its Acceptable Use of Information Technology Resources policy and retaliated against Dr. Anthony based on his protected concerted activities and Board activities, in violation of Sections 8(a)(1) and (4) of the Act.

The Acting General Counsel contends that the deactivation of Dr. Anthony’s alumni email account occurred because he engaged in protected concerted activities and Board activities. The Respondent contends the account was discontinued because residents complained about the email, it disrupted new student orientation, and it violated the Respondent’s technology policies.

Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), governs mixed-motive cases where discriminatory intent is alleged. Under *Wright Line*, the General Counsel must initially prove an employee’s protected conduct was a motivating factor in the employer’s adverse action against the employee. The elements required to support the General Counsel’s initial showing are the employee’s protected conduct, employer knowledge of that activity, and employer animus. If the General Counsel can make such a showing, the burden of persuasion shifts to the employer “to demonstrate that the same action would have taken place even in the absence of the protected conduct.” 251 NLRB at 1089; See also *Signature Flight Support*, 333 NLRB 1250, (2001) (applying *Wright Line* in the context of discharge for protected concerted activity). Section 8(a)(4) allegations concerning dual motivation discipline are also analyzed under *Wright Line*. See *Freightway Corp.*, 299 NLRB 531, 532 (1990).

Unlawful employer motivation may be established by circumstantial evidence, including, among other things: (1) the timing of the employer’s adverse action in relationship to the employee’s protected activity; (2) the presence of other unfair labor practices; (3) statements and actions showing the employer’s general and specific animus; (4) disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer’s proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc.*, 332 NLRB 251, 260 (2000), enfd. mem. 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534 (1993) (other unfair labor practices); *NLRB v. Vemco, Inc.*, 989 F.2d 1468, 1473–1474 (6th Cir. 1993); *Affiliated Foods, Inc.*, 328 NLRB 1107

⁵¹ While private enforcement is not contemplated by the settlement agreement, I could find no caselaw or other authority holding that sending correspondence similar to what Dr. Anthony sent removes it from the Act’s protections.

(1999)(statements showing animus); *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999)(disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), affd. mem. 927 F.2d 614 (11th Cir. 1991), cert. denied 502 U.S. 814 (1991) (departure from past practice); *Wright Line*, 251 NLRB at 1089; *Roadway Express*, 327 NLRB 25, 26 (1998) (disparate treatment). Another indicator of unlawful motivation is shifting explanations for a personnel action. See *City Stationery, Inc.*, 340 NLRB 523, 524 (2003) (nondiscriminatory reasons for discharge offered at the hearing were found to be pretextual where different from those set forth in the discharge letters); *GATX Logistics, Inc.*, 323 NLRB 328, 335 (1997).

Here, it is undisputed that the Respondent knew about the email and knew Dr. Anthony had recently filed Board charges that resulted in a settlement agreement. Meharry admittedly discontinued Dr. Anthony’s alumni email account based on the knowledge of the email, and the email referenced his Board settlement agreement. It is also clear the Respondent took umbrage with the content of the email, stating essentially that it was disruptive to orientation and its verbiage made some new residents uncomfortable.⁵² Moreover, as discussed below, it was not until after Dr. Anthony filed Board charges and reported noncompliance with the settlement agreement to the Board that his emails came under scrutiny.

The Respondent contends that, faced with complaints about Dr. Anthony’s email, it determined that he had violated company policy by sending a mass email. I find this is pretext and that the email’s content, which advocated for employee rights as detailed above, was a motivating factor in the decision to discontinue the alumni email account. There is no dispute that the Respondent maintained the right to terminate any user email account under its policies. In this regard, there is no meaningful distinction in the policy between alumni email accounts as opposed to any other Meharry-administered email account.⁵³ The record is clear that, prior to his Board activity, Dr. Anthony had sent bulk emails to the house staff in his role as house staff association president, including group emails regarding unionization, without repercussion. In addition, a Meharry user sent bulk emails in April and July 2022, regarding housing to an address “allstudents@email.meharry.edu.”⁵⁴ While arguably nobody in management was aware of these emails, there is no doubt a bulk email regarding “levels of professional wellness and burnout” sent from a resident on September 18, 2020, to multiple individuals as well as several medical departments, was seen by management.⁵⁵

⁵² In this regard, it is impossible to discern the nature of any complaints from the email’s content that rendered it protected concerted activity in essence. While the framework in *Burnup & Sims, Inc.*, 256 NLRB 965, 976 (1981), arguably applies because of the protected concerted nature of the email itself, I find the *Wright Line* paradigm fits better because the discontinuation of Dr. Anthony’s alumni account does not easily fit into the category of “employee discipline” and the Respondent has a colorable argument that violation of its policies was the reason for its action, making it a mixed-motives case.

⁵³ The Respondent asserts, correctly, that the enforcement mechanism is different depending on whether the user was a student, employee, or alumni. (R Br. 20; GC Exh. 14.) This does not negate my finding, however, that the decision to enforce the policy was a result of his protected activity.

⁵⁴ GC Exhs. 9–12.

⁵⁵ GC Exh. 13. The Respondent argues the emails in Exhs. 9–13 should have been excluded based on hearsay. They were offered to show that others had sent bulk emails, and I am not considering, for example, whether the content of the housing emails was true. (Tr. 53.)

Critically, there was no specific, non-hearsay evidence of any complaints from residents about Dr. Anthony’s email, nor was there any showing as to how orientation was disrupted.⁵⁶ The Respondent provided evidence that other alumni email accounts were suspended.⁵⁷ The reasons for those suspensions, however, and whether any of the other affected individuals had been employees who engaged in protected concerted activity or Board activity, are not a matter of record. They are thus not meaningful comparators.

Finally, although the alumni email account was not a term or condition of employment, the Board has stated, “It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) . . . is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.” *American Freightways Co.*, 124 NLRB 146, 147 (1959); see also *Grand Sierra*, above, slip op. at 2. The Respondent’s actions here interfered with Dr. Anthony’s ability to engage in protected concerted activity through use of his alumni email account. Employees faced with having their alumni email accounts deactivated for engaging in protected concerted activity would obviously be deterred from using their accounts for such purposes.

In sum, the evidence establishes that Dr. Anthony’s July 1, 2022, email constituted protected concerted activity. Dr. Anthony had previously sent emails to a similar number of recipients, including emails concerning unionization of residents, and other Meharry email users had sent emails to multiple recipients, including department leaders. Only after Dr. Anthony had filed three Board charges, including one resulting in the settlement agreement discussed herein, did the Respondent take adverse action against him. This evidence, coupled with the lack of non-hearsay evidence regarding complaints about Dr. Anthony’s email, and the holes in the evidence regarding comparators, compels me to find the Acting General Counsel has established the Respondent violated Section 8(a)(1) and (4) of the Act as alleged.⁵⁸

C. May 2023 PGY-3 Refusal to Hire or Consider for Hire

Complaint paragraphs 15-17 allege that in May 2023, the Respondent refused to consider for hire or refused to hire Dr. Anthony for a PGY-3 residency position, in violation of Section 8(a)(1) and (4) of the Act.

The Board applies the framework set forth in *FES*, 331 NLRB 9, 12 (2000), supplemented by 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002), to analyze allegations of discriminatory failures to hire. The General Counsel has the burden to prove:

- (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct;

⁵⁶ While I allowed the admission of some hearsay testimony, I stated it would be given weight if it was corroborated or otherwise bore indicia of reliability under the Board’s standards. The testimony about resident complaints to leadership conveyed to Smith is double hearsay and not entitled to weight. See *T.L.C. St. Petersburg*, 307 NLRB 605 (1992)

⁵⁷ R Exh. 11.

⁵⁸ The evidence relied upon to show disparate treatment likewise shows disparate enforcement of the policies at issue, as alleged in the complaint.

(2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and

(3) that antiunion animus contributed to the decision not to hire the applicants.

Though *FES* involved union activity, its framework also applies to refusal-to-hire violations directed against protected concerted activity and Board activity. *Bo-Ty Plus, Inc.*, 334 NLRB 523, 529 (2001); *Motor City Electric Company*, 204 NLRB 460 (1973). If the General Counsel establishes the initial criteria, the burden shifts to the employer to prove it would not have hired the applicant even in the absence of protected activity. *FES* at 12.

To establish a refusal to consider for hire allegation, the General Counsel bears the burden of showing the following: (1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus, or animus toward protected activity, contributed to the decision not to consider the applicants for employment. *FES* at 15.

The record reflects that Dr. Cheng informed Dr. Anthony that there was not a PGY-3 opening for the 2023–2024 academic year, and that Meharry was not hiring or seeking to hire a PGY-3 resident. Dr. Cheng’s testimony that Meharry did not post an opening is unrefuted. The Acting General Counsel asserts that, under the process set forth in the psychiatry residency training manual for the 2020–2021 academic year, a resident seeking to return need only declare their intent to return and meet the specified guidelines. The training manual does not state reinstatement is a right or that it is somehow guaranteed, however. In fact, a previous resident who was non-renewed for failing to pass their step 3 exam, sought reinstatement which was initially denied because the program was full. Two other residents were not permitted to return to the program, and another resident was provided the same extension Dr. Anthony received to pass his step 3 exam, passed the exam in the allotted time, and was permitted to remain in the program. Dr. Anthony was treated similarly to other residents seeking to return, and the evidence clearly shows reinstatement was not guaranteed for any resident. The refusal to hire allegation thus fails.

Turning to the refusal to consider for hire, the Acting General Counsel likewise failed to establish the first prong, i.e. that Dr. Anthony, or any other resident, was excluded from a hiring process. The Acting General Counsel contends that, because there were seven residents in the 2022–2023 PGY-2 class, and only six of them were in the 2023–2024 PGY-3 class, Meharry could have hired an additional resident. The evidence shows, however, that one of the 2022–2023 residents had been dismissed from the program, leaving six residents remaining. Elliott provided unrefuted testimony that the psychiatry residency program was capped at six residents for each PGY year until the 2023–2024 academic year, when the cap changed to four for incoming residents with the goal of having each PGY year capped at four residents. I found Elliott to be a highly credible witness based on her forthcoming and open demeanor.⁵⁹ She

⁵⁹ A credibility determination may rest on various factors, including “the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts,

appeared to answer questions earnestly and honestly, providing corrections and asking for clarification when she believed it necessary.⁶⁰ Elliott no longer worked for Meharry at the time of her testimony, and therefore had no reason to be dishonest or to embellish her testimony to please her employer. In addition to being credible, Elliott’s testimony regarding the cap on psychiatry residents was unrefuted.⁶¹

The Acting General Counsel further argues that there were only five PGY-3 residents for the 2022–2023 academic year, so Dr. Anthony could have filled the sixth open slot. This ignores the fact that the academic year started on July 1, 2022, so by the time Dr. Anthony inquired, the 2022–2023 PGY-3 residents had already completed over eight months of their training for the academic year. The Acting General Counsel asserts that three of the six 2023–2024 PGY-3 residents were fast-tracking and likely doing a different rotation than the other PGY-3 residents. This does not negate that, with a complement of six residents, the PGY-3 class was full.

Based on the foregoing, I find the Acting General Counsel has not established the first *FES* criteria for refusal to consider for hire. Assuming the Acting General Counsel met the initial burden under either the *FES* refusal to hire or refusal to consider for hire paradigm, the Respondent has established that Meharry would not have reinstated Dr. Anthony even in the absence of his protected activity or Board activity. Elliott’s credible testimony establishes that Dr. Anthony did not meet the revised eligibility criteria to be admitted for the 2023–2024 academic year. Specifically, he did not meet the criteria for time between medical school and residency, and he exceeded the criteria for attempts to pass step exams, as detailed in the statement of facts.⁶² I recommend dismissal of these allegations.

D. June 2024 PGY-2 Refusal to Hire or Consider for Hire

Complaint paragraphs 21-23 allege that the Respondent refused to hire Dr. Anthony or consider him for hire for a PGY-2 position in June 2024, in violation of Section 8(a)(1) and (4) of the Act.

The *FES* framework applies to this allegation. It is undisputed that Meharry was filling a PGY-2 position for the 2024–2025 academic year and that Dr. Anthony applied. He met the generally known requirements for the position as delineated in the resident swap posting. I

inherent probabilities and reasonable inferences that may be drawn from the record as a whole.” *Hills & Dales General Hospital*, 360 NLRB 611, 615 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001).

⁶⁰ See, for example, Tr. 357, 404, 414, 415.

⁶¹ In this regard, the Acting General Counsel’s argument in closing brief (not reflected in the complaint allegation) that Dr. Anthony should have been considered for a PGY-2 position when he contacted Dr. Cheng in 2023 fails, as there were no available PGY-2 slots. Even had there been room in the program, it was not unreasonable for Dr. Cheng to believe Dr. Anthony was seeking a PGY-3 position, given that Dr. Anthony’s email stated at the front end, “I have successfully completed my USMLE Step 3 examination and am now seeking to *complete* my psychiatry residency training.” (GC Exh. 15, emphasis added.)

⁶² The Acting General Counsel points out that these deficiencies were not stated as a reason for not reinstating Dr. Anthony. That is true, but it does not foreclose the Respondent from arguing and proving that had there been space in the program, Dr. Anthony did not meet the revised selection criteria.

further find that Dr. Anthony has established the requisite animus.⁶³ I find, however, that the Respondent has established it would not have reinstated Dr. Anthony even had he not engaged in protected activity under either Section 8(a)(1) or Section 8(a)(4) of the Act.

Dr. Anthony was informed, in response to his application, that he was no longer eligible due to the number of times it took him to successfully complete his step 1 and 2 exams. To cast doubt on this rationale, the Acting General Counsel points to Elliott’s testimony that the research had shown that the step 1 exam was the best predictor for passing the boards. (Tr. 366.) This does not negate Elliott’s testimony, supported by DIO Nichols’ December 2022 correspondence to program leadership, that Meharry had implemented a policy limiting attempts to pass both step 1 and step 2 exams.⁶⁴

The Acting General Counsel further asserts that the December 2022 changes were not implemented in a formal policy, and they were not strict eligibility requirements, as indicated by the use of the phrase “attempts should be limited to 2 attempts.” It is true that the Respondent could have considered re-admitting Dr. Anthony and stayed within the bounds of the baseline ACGME standards set forth in the July 3, 2023, eligibility, selection, and appointment policy. The Acting General Counsel has not, however, shown that the enhanced evaluation criteria, formulated in response to Meharry being placed on probation, did not exist or were not followed during the time period at issue. The changes to the eligibility criteria were approved by the GMEC and documented, and Dr. Cheng’s testimony that the program did not accept residents who had failed the step 2 exam three times, whether they were starting as a first year or above, following implementation of the new criteria is not rebutted. No evidence was presented that exceptions were made for any other residents.

Based on the foregoing, I recommend dismissal of these complaint allegations.

E. Negative Reference to Harlem Hospital

Complaint paragraph 18 alleges that on or about July 10, 2023, Lloyd Williamson provided a negative reference for Dr. Anthony to Harlem Hospital’s psychiatry program, in violation of Section 8(a)(1) and (4).

⁶³ I rely on the adverse reaction to Dr. Anthony’s protected concerted activity and Board activity, discussed in connection with the cancellation of his alumni account, as evidence of animus. The Respondent’s attempts to distance Dr. Cheng from Anthony’s protected activity fail. “[I]t is well established that the Board imputes a manager’s or supervisor’s knowledge of an employee’s protected concerted activities to the decisionmaker, unless the employer affirmatively establishes a basis for negating such imputation.” *G4S Secure Solutions (USA) Inc.*, 364 NLRB No. 92, slip op. at 3 (2016). The Respondent has not done so here, and the Respondent knew about Anthony’s multiple Board charges by August 2024. The Acting General Counsel points to the Respondent’s attorney’s statement that there was no path back to residency at Meharry for Dr. Anthony unless a court reinstated him as evidence of animus. While it may have indicated animus, it may also have been a simple (albeit blunt) statement that Dr. Anthony did not meet the minimum evaluative criteria to be re-hired.

⁶⁴ The changes were made prior to Dr. Anthony’s attempts to be reinstated at Meharry, so there is no colorable argument that the changes were made to prevent his reinstatement.

Although the criteria were not published to applicants, the record shows they were applied uniformly.

The Board has held that a violation of Section 8(a)(1) and 8(a)(4) can occur based on a negative reference or a threat to give a negative reference. *Norris Concrete Material*, 282 NLRB 289 (1986). *Wright Line* applies to this allegation.

5 As to protected concerted activity, the complaint alleges that Dr. Williamson gave Dr. Anthony a negative reference because of his tweets. As detailed above, I have found the tweets were not protected concerted activity, and therefore this theory of the allegation fails.⁶⁵

10 Turning to Section 8(a)(4), I find the Acting General established the initial *Wright Line* burden. Dr. Nnamdi testified that Dr. Williamson provided mostly positive feedback but told him Dr. Anthony could have some trouble with authority figures. M. Anthony testified based on a conversation she had with Dr. Williamson shortly after Dr. Williamson’s conversation with Dr. Nnamdi.⁶⁶ Dr. Williamson told M. Anthony that she did not believe Dr. Anthony had learned how to handle problems based on his Twitter posts. The Respondent asserts that the reference
15 was not negative, but I find these comments are sufficient to support the Acting General Counsel’s characterization of the complaint allegation.

The Respondent knew about Dr. Anthony’s Board charges, and in fact Dr. Williamson’s refusal to provide him with a recommendation served as the basis for charge 10–CA–285432.
20 With regard to animus, I find the Respondent’s disregard of the settlement agreement by having Dr. Williamson provide the reference rather than Dr. Cheng, or in Dr. Cheng’s absence sending the agreed-upon letter of support, demonstrates a disregard for the Board’s processes.⁶⁷ The Respondent argues the Acting General Counsel cannot establish animus because Dr. Williamson was not aware of the Board charges and did not know the details of Dr. Anthony’s tweets. As
25 stated above, I have found the tweets were not protected concerted activity.⁶⁸ As to Dr. Williamson’s knowledge of the Board charges, she was aware that Dr. Anthony had initiated legal proceedings against Meharry when he asked her for a strong recommendation in October 2021. (GC Exh. 23.) In any event, it is imputed. *G4S Secure Solutions*, above. Moreover, Dr. Williamson was directly implicated in the settlement agreement, which precluded her and
30 anyone other than Dr. Cheng from providing a reference for Dr. Anthony. For her not to have been aware of it strains credulity and would render compliance meaningless.⁶⁹

⁶⁵ The complaint singles out the tweets as the protected concerted activity upon which this allegation rests. Dr. Anthony’s July 1, 2022, email is not included as basis.

⁶⁶ The Respondent argues that M Anthony’s testimony about what Dr. Williamson said is hearsay. I agree with the Acting General Counsel that it was an exception because it was a statement from an opposing party. In addition, it is corroborated by Dr. Williamson’s sworn affidavit. (GC Exh. 23.)

⁶⁷ There is no allegation regarding breach of the settlement agreement.

⁶⁸ The text messages make clear that Dr. Williamson saw the tweets and viewed them as unprofessional. I do not find it unreasonable for Dr. Williamson to have viewed Dr. Anthony’s tweeting about the specifics of patient treatment in detail during his shift as unprofessional. It does not indicate animus toward protected activity or Board activity, as it fits within the realm of reasonable professional opinion, especially in the medical field where sensitive patient information is at issue.

⁶⁹ It was Dr. Cheng who suggested that Dr. Nnamdi speak with Dr. Williamson. Dr. Cheng likewise was directly implicated in the settlement agreement, as he is the person who was to provide a reference under its terms.

The Respondent has not offered a legitimate reason for disregarding the settlement agreement and having Dr. Williamson provide a reference for Dr. Anthony. I find, therefore, the Acting General Counsel has established a violation of Section 8(a)(4) of the Act.⁷⁰

F. Refusal to Update Summative Evaluation

Complaint paragraphs 24–26 allege that since August 2024, the Respondent refused to update Dr. Anthony’s summative evaluation form, thereby depriving him of earned credit for the work he performed, impeding his progress in his new residency program at another medical institution, in violation of Section 8(a)(1) and (4) of the Act.

Under the facts of this case and the evidence presented, I find the failure to update Dr. Anthony’s summative evaluation does not constitute an adverse action. The individual tasked with completing Dr. Anthony’s summative evaluation was Dr. Williamson, who was the acting program director for the psychiatry residency program at the time of its creation. She signed the summative evaluation on February 7, 2022. There is no allegation that the February 2022 summative evaluation itself violated the Act, only that Dr. Cheng’s failure to update it in 2024 did.

Any problems Dr. Anthony had with the creation of the summative evaluation in February 2022, included his lack of opportunity to review it, were apparently not raised at the time. It is notable that Dr. Anthony did not take steps to dispute the summative evaluation until August 2024, when he was seeking additional credits in order to take advantage of a dual credit opportunity at his new residency. Dr. Cheng’s testimony that the summative evaluation is not contestable, debatable, or appealable is unrefuted, and there is no record evidence that any other residents were permitted have their summative evaluations re-evaluated and changed after the fact.⁷¹ I am in no position to second-guess the Respondent’s determination not to consider updating the summative evaluation, which would entail re-determining Dr. Anthony’s earned credits more than two years after its creation, especially considering the undisputed facts that Dr. Anthony did not complete a geriatric rotation at Meharry and he was given credit for a month of forensics in line with Meharry’s practice.⁷²

Regarding the alternative path to receive credit for geriatrics by entering into an agreement with Dr. Cheng, submitting logs, and completing an online course, Dr. Cheng’s

⁷⁰ There is no allegation that the reference led to Dr. Anthony not being hired at Harlem Hospital, and the unrefuted evidence shows that, although Dr. Anthony and another individual applied for the position, Dr. Nnamdi decided not to fill it. Dr. Nnamdi provided unrefuted testimony that the PGY-4 residents agreed to cover the night rotation, obviating the need for an additional PGY-3 resident. The Acting General Counsel has not submitted evidence that Dr. Nnamdi was being untruthful, and therefore instatement into the position at Harlem Hospital as a remedy is foreclosed, notwithstanding the fact that Harlem Hospital has not been accused of, much less found liable for, a violation of the Act.

⁷¹ The Acting General Counsel’s argument that Dr. Cheng’s failure to engage with Dr. Anthony shows animus is unpersuasive given the undisputed evidence establishing that the summative evaluation was not contestable.

⁷² The evidence does not suggest that Dr. Anthony was prohibited from progressing in his new program based on a lack of forensics credits.

unrefuted testimony was that this offered to graduating residents so that their graduations would not be delayed due to constraints brought on by the COVID-19 pandemic.⁷³ It is likewise undisputed that Dr. Anthony did not enter into such an alternative agreement, and that he did not submit his logs of treating geriatric patients in rotations other than a geriatric rotation.⁷⁴

The Acting General Counsel submitted no evidence to show that reconsideration of credits in a resident's summative evaluation following an extended lapse of time is something Meharry has ever entertained. Dr. Cheng's testimony that he could not change Dr. Williamson's summative evaluation is unrefuted, and even assuming Dr. Cheng could change the summative evaluation, there is no evidence that any other former residents were treated differently, regardless of protected status.

I recommend dismissal of these complaint allegations.

CONCLUSIONS OF LAW

1. By deactivating Joshua Anthony's alumni email account and providing an unsatisfactory job reference for Dr. Anthony to Harlem Hospital the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By deactivating Joshua Anthony's alumni email account, the Respondent has violated Sections 8(a)(1) and (4) of the Act.

3. By providing an unsatisfactory job reference for Joshua Anthony to Harlem Hospital, the Respondent has violated Section 8(a)(4) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent deactivated Joshua Anthony's alumni email account because of his protected concerted activity and Board activity, and having found the Respondent discriminatorily enforced its information technology policies, the Respondent will be ordered to cease and desist from such action and to restore Dr. Anthony's alumni email account.

⁷³ The Acting General Counsel faults the Respondent for not providing documentation to support Dr. Cheng's testimony. His testimony, however, was not called into question by any competent evidence, so it did not need to be bolstered. The burden was on the Acting General Counsel to refute it, which did not occur.

⁷⁴ Dr. Anthony's testimony that he did not submit logs because he was not asked to does not square with record evidence of him submitting other unsolicited materials. (GC Exh. 22; R Exh. 17.) The Acting General Counsel's argument that Dr. Anthony kept logs of the geriatric patients to receive credit for a geriatric rotation must be considered in conjunction with the requirement to keep logs set forth in the department of psychiatry residency training manual.

Having found the Respondent provided an unsatisfactory job reference for Joshua Anthony to Harlem Hospital, the Respondent shall be ordered to cease and desist from such action and to retract the negative reference.

I will order the Respondent to post a notice at the facility in the usual manner, and distribute the notice electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15-16 (2010), and *Durham School Services*, 360 NLRB 694 (2014). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate, and if so what method of electronic notice should be required, is to be resolved at the compliance phase. *Id.* at 13.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷⁵

ORDER

The Respondent, Meharry Medical College, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Deactivating employees' alumni email accounts because they engaged in protected concerted activity and/or Board activity.

(b) Discriminatorily enforcing its information technology policies to prohibit mass communications concerning protected concerted activities.

(c) Providing unsatisfactory job references for employees because they filed Board charges and cooperated with the Board's processes.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of this Order, restore Joshua Anthony's alumni email account.

(b) Within 14 days from the date of this Order, contact Harlem Hospital, retract any negative references given to them about Joshua Anthony, and indicate that Meharry has no objection to the employment of Joshua Anthony by Harlem Hospital, and inform Dr. Anthony in writing that this has been done.

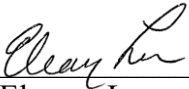
⁷⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked “Appendix.”⁷⁶ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 2022.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. September 30, 2025


 Eleanor Laws
 Administrative Law Judge

⁷⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT deactivate your alumni email accounts because you engage in protected concerted activity and/or Board activity.

WE WILL NOT discriminatorily enforce our information technology policies to prohibit mass communications concerning protected concerted activities.

WE WILL NOT give an unsatisfactory job reference to any employee because the employee filed unfair labor practice charges with the National Labor Relations Board or engaged in other Board activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, contact Harlem Hospital and retract any negative references given to them about prospective employee Joshua Anthony, indicate that we have no objection to the employment of Joshua Anthony by Harlem Hospital, and WE WILL inform Dr. Anthony in writing that this has been done.

MEHARRY MEDICAL COLLEGE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

233 Peachtree Street N.E., Harris Tower, Suite 1000, Atlanta, GA 30303-1531
(404) 331-2896, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-299029 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (404) 331-2870.