



**STATE OF ARKANSAS  
BUREAU OF  
LEGISLATIVE RESEARCH**

Marty Garrity, Director

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for Information Technology Services

***Claims Review/Litigation Reports Oversight Subcommittee  
of the Arkansas Legislative Council  
Claims Subcommittee of the Joint Budget Committee  
Statement of Redaction of Confidential Information***

Style of Case: Michelle R. Smith, Ph.D. vs. Arkansas Department of Health, et al.  
Docket Number: No. 4:23-CV-359

Type of Matter (please circle one):

Claims Review

Litigation Reports Oversight

As indicated by my signature below:

- I acknowledge that documents submitted to the Subcommittee may be published or disseminated by the Subcommittee for purposes of its consideration and those documents that are published or disseminated by the Subcommittee will be considered subject to disclosure under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.
- I further acknowledge that it is my responsibility to review each document submitted to the Subcommittee and make any necessary redactions.
- I certify that I have reviewed each document submitted herein and have redacted all confidential information excluded from public access by Arkansas Supreme Court Administrative Order No. 19, § VII, and the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., including without limitation an individual's home address, personal email address, personal phone number, date of birth, social security number, information identifying a minor child, medical records, and financial account numbers.
- If a redacted document has been submitted, I have also included a non-redacted copy of the same document that may be considered exempt from disclosure under Arkansas Code § 25-19-105.

Reginald A. Rogers  
Signature

Deputy General Counsel  
Arkansas Department of Health  
Title and Agency (501) 661-2609

Reginald A. Rogers  
Name

MARCH 11, 2025  
Date

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revised 08/23



**State of Arkansas**  
**Bureau of**  
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**State Agency Litigation Notification Form**

**Dear Agency Director:**

**Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."**

**In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to [desikans@blr.arkansas.gov](mailto:desikans@blr.arkansas.gov).**

DATE REPORTING:	
Agency:	Arkansas Department of Health
E-mail:	reginald.rogers@arkansas.gov
Phone:	(501) 661-2609
Contact:	Reginald A. Rogers
1. STYLE OF THE CASE BEING LITIGATED	
Michelle R. Smith, Ph.D. vs. Arkansas Department of Health, et al. Case No. 4:23-CV-359	
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)	
United States Eastern District of Arkansas, Central Division	
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED	
<p>Michelle Smith, the plaintiff, filed this civil rights case for alleged unlawful racial discriminatory practices.</p> <p>Dr. Smith filed this federal lawsuit in 2023. The plaintiff also alleged retaliatory treatment. The</p> <p>Plaintiff worked at the Arkansas Department of Health as an administrator from 2010 until she resigned in 2022.</p> <p>The defendants deny the allegations</p>	
3A. OTHER DESCRIPTION INFORMATION	
Docket Number	Case No. 4:23-CV-359
Date Filed	April 17, 2023
Defendant	Arkansas Department of Health and State Board of Health
Defendant Attorney	Brian Black Senior Assistant Attorney General Attorney General's Office
Plaintiff	Michelle R. Smith, PhD.
Plaintiff Attorney	Austin Porter, Sr.
4. ANY OTHER RELEVANT INFORMATION	
4A. OTHER RELEVANT INFORMATION	
Case History	Case was settled prior to federal jury trial. Case dismissed pending Legislative review.
Relief Sought	Reinstatement and backpay; compensatory and punitive damages.
Current Status	Case dismissed pending Legislative review.

**A.C.A. § 10-3-312**

Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 10 General Assembly
- Chapter 3 Committees
- Subchapter 3-- Legislative Council

**10-3-312. NOTIFICATION OF LAWSUITS AFFECTING STATE.**

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- (a) In order that the General Assembly may take whatever steps it deems necessary concerning lawsuits which may affect the State of Arkansas, its officials, or its financial resources:
  - (1) The Attorney General shall notify the Director of the Bureau of Legislative Research who is the Executive Secretary to the Legislative Council as soon as possible after the Attorney General becomes involved in such litigation;
  - (2) **When any state agency or any entity which receives an appropriation of funds from the General Assembly becomes involved in litigation without representation by the Attorney General, the director or administrative head of the agency shall notify the Director of the Bureau of Legislative Research as soon as possible.**
- (b) The notice given by the Attorney General or by the director or administrative head of a state agency to the Director of the Bureau of Legislative Research shall include the style of the case being litigated, the identity of the tribunal before which the matter has been filed, a brief description of the issues involved, and other information that will enable the Legislative Council or the Joint Budget Committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter.
- (c) Upon receipt of the notice, the Director of the Bureau of Legislative Research shall during the interim between legislative sessions transmit a copy of the notice to the cochairs of the Legislative Council and to the cochairs of the Joint Budget Committee during legislative sessions in order that those committees may schedule that matter upon their respective agendas at the earliest possible date.
- (d) During the interim between legislative sessions, the Legislative Council shall determine, and during legislative sessions the Joint Budget Committee shall determine, whether the General Assembly has an interest in the litigation and, if so, take whatever action deemed necessary to protect the General Assembly's and the state's interest in that matter.

**HISTORY**

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Acts 1987, No. 798, §§ 1, 2.

Arkansas Code of 1987 Annotated Official Edition  
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A.C.A. § 10-3-312 (Lexis Advance through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission)

This case involves a claim of discrimination made by a former Arkansas Department of Health (ADH) employee.

The plaintiff, Dr. Michelle Smith, was employed by the ADH as the Director of the Office of Health Equity (OHE). She had held that position for approximately ten years.

Dr. Smith's claims include, but are not limited to, the claim that she (a minority) was paid less than similarly situated white employees. Dr. Smith also had claims of discrimination and retaliation.

Dr. Smith alleges that the ADH moved her from OHE to the Office of the Chief Financial Officer, removing her supervisory authority and removing her from the ADH's Senior Executive Team. Dr. Smith also alleges that ADH then conducted an audit of the Office of Health Equity. Dr. Smith contends that this audit was conducted in retaliation for her efforts to alert her superiors to ADH's alleged discriminatory conduct.

ADH, of course, disputes all these allegations. The Department had legitimate, non-discriminatory reasons for all its decisions and all of its actions with respect to Dr. Smith. A trial of this case was going to be exceptionally costly. The number of witnesses was expected to be large (perhaps as many as thirty in all). Many of those witnesses are no longer employed by ADH, and several of them have relocated out of state. The potential fees and travel expenses in this case were expected to be significantly larger than the norm.

While the Department believes that it should prevail at trial, there is always a risk of an adverse judgment in any jury trial. If the jury were to make an award of damages to the Plaintiff, it would likely be large, given the compensation and qualifications of this plaintiff. A damage award in this case would likely be significantly more than the amount of the settlement here.

And even a small award of damages would entitle the plaintiff to an award of attorney's fees. Dr. Smith is represented by very experienced and skilled counsel, with a track record of success. The likely fee award in the event of a plaintiff's verdict in this case would itself likely be significantly more than the amount of the settlement. The decision to settle the case represents a significant reduction in the potential exposure should the case go to trial and result in a judgment for the Plaintiff.

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

APR 17 2023

TAMMY H. DOWNS, CLERK

By:  DEP CLERK  
PLAINTIFF

MICHELLE R. SMITH, Ph.D.

VS.

CASE NO. 4:23-CV- 359-JM

This case assigned to District Judge Moody  
and to Magistrate Judge Harris

STATE BOARD OF HEALTH,  
A Body Politic and Corporate and  
ARKANSAS DEPARTMENT OF HEALTH,  
A Body Politic and Corporate

DEFENDANTS

COMPLAINT

Introduction

This is a civil rights action brought pursuant to 42 U.S.C.S. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964, as amended), in order to recover damages against the defendants for the unlawful discriminatory employment practices that the plaintiff Michelle R. Smith, Ph.D., has been subjected to all on account of her race. The plaintiff also brings this action against the defendant pursuant to 42 U.S.C.S. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964, as amended), seeking damages against the defendants due to retaliatory treatment that she was subjected to after having complained about discriminatory treatment and/or for opposing discriminatory practices. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 to declare the rights and other legal relations between the parties. The plaintiff is also seeking equitable relief and injunctive relief as well.

I.  
Jurisdiction

1. Jurisdiction and venue of this Court are invoked pursuant to 28 U.S.C. §§ 1331, 1343, 1391, 42 U.S.C. §§ 2000e *et seq.* (Title VII of the Civil Rights Act of 1964, as amended).

2. The unlawful employment practices alleged to have been committed against the plaintiff were committed in the State of Arkansas, and in the County of Pulaski.

II.  
Parties

3. The plaintiff Michelle R. Smith, Ph.D., is an African American female, and is a resident of the United States of America.

4. The defendant State Board of Health by statute has been entrusted *inter alia*, with the power to “make all necessary and reasonable rules of a general nature for the protection of the public health and safety. . . .” *See* Ark. Code Ann. § 20-7-109. The State Board of Health is a body politic and corporate.

5. Likewise, the defendant Arkansas Department of Health<sup>1</sup> by statute has been entrusted *inter alia*, with the power to “make all necessary and reasonable rules of a general nature for the protection of the public health and safety. . . .” *See* Ark. Code Ann. § 20-7-109.

6. The defendant State Board of Health is an employer within the meaning of 42 U.S.C.S. § 2000e (b), (g), and (h).

7. The defendant Arkansas Department of Health is an employer within the meaning of 42 U.S.C.S. § 2000e (b), (g), and (h).

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<sup>1</sup> From all indications, although not crystal clear, the State Board of Health and the Arkansas Department of Health are one in the same.

III.  
Facts

8. Dr. Michelle R. Smith was formerly employed by the State Board of Health/Arkansas Department of Health.

9. Dr. Smith was initially hired by the State Board of Health/Arkansas Department of Health on or about December 20, 2010 as the Director of the Office Health Equity.

10. The Office of Health Equity, is a division within the State Board of Health/Arkansas Department of Health that serves a purpose “to help identify those unfair, avoidable and unjust health differences” between the races that exist within the State of Arkansas.

11. As the Director of the Office of Health Equity, Dr. Smith has been an advocate to ensure that those in the African American communities and the Latinx communities, and other underserved communities have equal access to quality healthcare.

12. Dr. Smith holds a master’s in public health, and received her Ph.D. in Public Policy in 2005.

13. In her role as the Director of the Office of Health Equity (OHE), Dr. Smith often pointed out healthcare disparities that existed throughout the State of Arkansas.

14. Also in her role as the Director of OHE, Dr. Smith often pointed out the inequities that existed within the Arkansas Department of Health in relations to the treatment of African American employees.

15. Dr. Smith has also brought out to officials within the Arkansas Department of Health that there are pay inequities that exist within the Arkansas Department of Health (ADH), particularly as they exist between black and white employees who are similarly situated.

16. Dr. Smith has also voiced concerns to officials within the Arkansas Department of Health that the OHE, which is a majority black division within the health department, is the most



scrutinized department within the department of health, and that OHE was being held to a different standard than most departments.

17. During the COVID-19 pandemic, the disparities that existed between black and brown communities and the white communities were brought to the forefront.

18. Due to the health disparities that existed between blacks and whites, and due to poor healthcare, African Americans and Hispanics were the hardest hit by the Coronavirus.

19. In order to meet the emergency needs that the Coronavirus had created, the plaintiff established the Health Equity Strike Teams (HEST) in order to address the health disparities that exist within the black and brown communities in the fight against COVID-19.

20. African Americans and Hispanics died in disproportionate numbers due to the Coronavirus.<sup>2</sup>

21. According to the above-mentioned article, as of August 1, 2022, the infection rate for African Americans per 100,000 was 15,638.8, for Hispanics was 21,863.4, and for whites it was 14,858.4.

22. Also, the above-mentioned article mentioned that the death rate for African Americans due to COVID-19 was 441.9 per 100,000, for Hispanics was 466.00 per 100,000, and 268.5 per 100,000 for whites.

23. During the early part of the pandemic, the Centers for Disease Control (CDC) reported that African Americans accounted for 33% of the people who were hospitalized due to

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<sup>2</sup> See Hill and Artiga, COVID-19 Cases and Deaths by Race/Ethnicity: Current Data and Changes Over Time, <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-cases-and-deaths-by-race-ethnicity-current-data-and-changes-over-time/>

COVID-19, while only making up 13% of the United States population. Also, African Americans accounted for 34% of all COVID-19 deaths.<sup>3</sup>

24. Due to the healthcare crisis that America and the world were facing as a result of the Coronavirus, and in particular the disparities in healthcare borne out by the novel virus by race, healthcare officials were scrambling trying to address this crisis.

25. As director of the OHE, the plaintiff was sounding the alarm to her superiors, in trying to address the healthcare disparities that existed between the black and brown communities in relations to the white community.

26. Due to the disproportionate numbers that African Americans and Hispanics made up in the rates of infections and deaths, the plaintiff was working frantically in trying to address the healthcare disparities that existed.

27. Although African Americans represent 12.4% of the population of this country, only 9.3% were fully immunized. Also, Hispanics make up 17.2% of this country's population, but only 16.1% were fully immunized, especially during the first year when the COVID vaccines became available.

28. Dr. Smith serves in the United States Military, and is a member of the Arkansas National Guard.

29. Due to the efforts of Dr. Smith, the Arkansas Department of Health was awarded a \$41,000,000.00 grant in the fight against COVID-19, and to address the health equities that exist in the State of Arkansas.

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<sup>3</sup> See Aubrey, Who's Hit Hardest by COVID-19? Why Obesity, Stress and Race All Matter, <https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter>.

30. The plaintiff also discovered that she was being paid less than her white counterparts, in particular to Meg Mirivel, a Caucasian female, who is the Director of the Office of Communications.

31. In an effort to address this pay disparity, the plaintiff requested that she be reclassified from her pay grade classification of GS12 to a GS13; however, the defendant failed to reclassify the plaintiff's position.

32. Dr. Smith went on military leave from October 1, 2021 and returned on or about November 9, 2021.

33. When Dr. Smith returned to the Arkansas Department of Health, she was called into a meeting, and was informed that she was being moved out of her office in the Office of Health Equity (OHE), and was now being moved into office of the Chief Financial Officer, where she would no longer have supervisory authority.

34. The move took the plaintiff out of the Senior Executive Team.

35. On November 23, 2021, the plaintiff was informed that her office – OHE will be subjected to an audit, which was unprecedented.

36. On or about January 10, 2022, the plaintiff received a copy of the audit, and was only given four (4) days to respond to the audit, which really was not an audit, but was an investigation that contained many allegations made against the plaintiff, which were either false or inaccurate.

37. None of the plaintiff's white counterparts within the Arkansas Department of Health had ever been subjected to this type of "audit", nor had they been subjected to the type of demeaning treatment that the plaintiff was subjected to.

38. On January 12, 2022, the plaintiff was told that she could not contact her staff, which was critical for the plaintiff being able to properly respond to allegations that had been made against her in the so called “audit.”

39. Due to the move, the plaintiff was taken away from her staff in OHE, and was isolated from the leadership team, and away from others. In essence, the plaintiff was demoted in status, and was stripped of her responsibilities and duties as Director of the Office of Health Equity.

40. While working in her role as the Director of the Office of Health Equity one of the criticisms that Dr. Smith received was that she was “moving too fast,” and that there was always a sense of urgency with her.

41. However, Dr. Smith was having to address the disparities that existed within the black and brown communities of not having access to the COVID vaccines, and not having access to information that was necessary to prevent serious health crisis and to save their lives.

42. Senior Management within the Arkansas Department of Health did not share the same sense of urgency that Dr. Michelle Smith had in seeing that the African American and Hispanic communities receive COVID-19 vaccines and vital information that was needed to reduce the health inequities that these communities were suffering during the COVID-19 pandemic.

43. The so called “audit” covered multiple topics, covering nineteen (19) pages in length, and contained grievances made by some of Dr. Smith’s subordinates who were allowed to air their grievances against her.

44. Finally, after being subjected to retaliatory conduct and discriminatory treatment that made the plaintiff’s work environment intolerable, the plaintiff was constructively discharged from her position when she resigned on August 26, 2022.

## IV.

Title VII of the Civil Rights Act

45. The plaintiff incorporates by reference the allegations contained in paragraphs 1-44 of the plaintiff's complaint, and adopts each as if set out herein word for word.

46. The defendant has subjected the plaintiff to varied terms and conditions of her employment contract, all on account of her race, in violation of his rights as protected by Title VII of the Civil Rights Act of 1964 (as amended).

47. The defendant has subjected the plaintiff to disparate treatment on account of her race in violation of Title VII of the Civil Rights Act of 1964 (as amended), in that similarly situated white employees have been paid more than the plaintiff on account of their race.

48. Furthermore, the plaintiff has been held to a much higher standard in that she was subjected to an unwarranted "audit," which was really an investigation that was designed to tarnish the plaintiff's character, and smear her name, all in an effort to drive the plaintiff out of her position as the Director of the Office of Health Equity.

49. Also, the defendant has scrutinized the Office of Health Equity in a manner that no other office was held to, because this office was primarily staffed by African American employees, and was directed by an African American employee. The double standard that the defendant subjected the plaintiff to, on account of her race, violates Title VII of the Civil Rights Act of 1964 (as amended).

## V.

Retaliation

50. The plaintiff incorporates by reference the allegations contained in paragraphs 1-49 of the plaintiff's complaint, and adopts each as if set out herein word for word.

51. In her role as the Director of the Office of Health Equity, the plaintiff advocated for equal access to medical treatment and medical information on behalf of the African American and Hispanic communities, often complaining about the discriminatory treatment that these marginalized communities received from the defendant.

52. Furthermore, in her role as the Director of Health Equity, often complained about the discriminatory treatment that African American employees were being subjected to in terms and conditions of their employment, in that they were being paid less than their white counterparts.

53. Due to the plaintiff having complained and/or opposed discriminatory practices, she has been the victim of retaliatory conduct by the defendant.

54. The plaintiff was subjected to an unwarranted investigation into her operations of the Office of Health Equity, partly in response to her complaints about discriminatory treatment.

55. Also, the plaintiff was subjected to having her office heavily scrutinized, in part due to her having opposed unlawful employment practices, and her advocacy on behalf of African American and Hispanic communities.

56. Also, in retaliation for having opposed discriminatory practices and having advocated for equal access to medical care and information, on behalf of African American and Hispanic communities, the plaintiff was retaliated against when she was moved from her office, taken out of her role as Director of the Office of Health Equity, and placed in isolation, being demoted in status.

57. The above-mentioned acts of retaliation were done all in an effort to punish the plaintiff for having opposed unlawful employment practices, and for advocating on behalf of black and brown communities, all in violation of Title VII of the Civil Rights Act of 1964 (as amended).

58. The above-mentioned acts of retaliation were done in a manner as to dissuade others from complaining about discriminatory treatment.

VI.  
Procedural Requirement

59. The plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 58, *supra.*, inclusive as though set forth herein word for word.

60. On March 3, 2022, the plaintiff filed a Charge of Discrimination (No. 493-2022-00698) with the Equal Employment Opportunity Commission (EEOC), contending that she had been discriminated against in terms and conditions of her employment with the defendant, when she was subjected to sexual harassment, and was later retaliated against for having complained about sexual harassment in violation of Title VII of the Civil Rights Act of 1964 (as amended). **(See Charge of Discrimination attached herein as Plaintiff's Exhibit "A").**

61. In response to the plaintiff's Charge of Discrimination that she filed with the EEOC, said agency issued her a "Dismissal and Notice of Rights" letter dated January 27, 2023, which *inter alia* gave the plaintiff the right to sue the defendant within 90 days from the date she received the above-mentioned letter. **(A copy of said "Notice of Right to Sue" letter is attached to this complaint and is identified as Plaintiff's Exhibit "B").**

62. The plaintiff has met the statutory requirement of filing this complaint within ninety (90) days after receiving the "Dismissal and Notice of Rights" letter.

VII.  
Damages

63. The plaintiff incorporates by reference the allegations contained in paragraphs 1-62 of the plaintiff's complaint, and adopts each as if set out herein word for word.

64. As a direct and proximate cause of the discriminatory practices that the defendant subjected the plaintiff to on account of her race, the plaintiff has suffered economic loss by way of lost wages in an amount to be proven at the trial of this matter.

65. Furthermore, due to the discriminatory acts of the defendant, the plaintiff has experienced mental anguish, embarrassment, pain and suffering in an amount to be proven at the trial of this matter.

**JURY DEMAND**

66. The plaintiff requests that this matter be tried before a fair and impartial jury of twelve (12) persons.

THEREFORE, the plaintiff is seeking the following relief for the above-described unlawful employment practices:

- a. declare that the plaintiff has been subjected to unlawful discriminatory practices on account of her race;
- b. reinstatement and back pay;
- c. compensatory and punitive damages;
- d. attorney's fees;
- e. the cost of prosecuting this action;
- f. and for all other equitable, legal, and just relief.

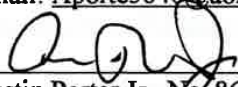
Respectfully submitted,

PORTER LAW FIRM  
The Catlett-Prien Tower  
323 Center Street, Suite 1035  
Little Rock, Arkansas 72201  
Telephone: 501-244-8200



Facsimile: 501-372-5567  
Email: Aporte5640@aol.com

By:

  
Austin Porter Jr., No. 86145

Dated this 17<sup>th</sup> day of April 2020.

EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		<b>Charge Presented To:</b> <b>EEOC</b> <b>Agency(ies) Charge No(s):</b> <b>493-2022-00698</b>					
<b>Not Applicable</b> <small>State or local Agency, if any</small>		<b>and EEOC</b>					
<b>Name (Indicate Mr., Ms., Mrs.)</b> <b>Dr. Michelle R. Smith</b>		<b>Home Phone</b> <div style="background-color: black; width: 100px; height: 1.2em; margin: 0 auto;"></div>					
<b>Year of Birth</b> <div style="background-color: black; width: 100px; height: 1.2em; margin: 0 auto;"></div>		<b>Street Address</b> <div style="background-color: black; width: 200px; height: 2em; margin: 0 auto;"></div>					
<b>Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)</b>							
<b>Name</b> <b>Arkansas Department of Health</b>		<b>No. Employees, Members</b> <b>101 - 200 Employees</b>					
<b>Phone No.</b> 							
<b>Street Address</b> <b>4815 W MARKHAM ST</b> <b>LITTLE ROCK, AR 72205</b>							
<b>Name</b> 		<b>No. Employees, Members</b> 					
<b>Phone No.</b> 							
<b>Street Address</b> <span style="float: right;"><b>City, State and ZIP Code</b></span> 							
<b>DISCRIMINATION BASED ON</b>  <b>Retaliation, Race</b>		<b>DATE(S) DISCRIMINATION TOOK PLACE</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><b>Earliest</b></td> <td style="width: 50%;"><b>Latest</b></td> </tr> <tr> <td>02/17/2021</td> <td>02/12/2022</td> </tr> </table>		<b>Earliest</b>	<b>Latest</b>	02/17/2021	02/12/2022
<b>Earliest</b>	<b>Latest</b>						
02/17/2021	02/12/2022						
<b>THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):</b> <p>I was hired on 12/20/2010 as Office of Health Equity Director. In February 2021, I complained about race discrimination and retaliation. In October 2021, I requested a job classification change. I went on military leave from 10/1/22 through 11/2/21. Prior to leave for military duty, I had applied and approved for a 41-million-dollar grant for the department of health. I complained about pay disparity between black employees and white employees. On 11/9/21, when I returned to Arkansas, I was called to a meeting. I was asked what I thought about moving my office to the CFO area. I informed them that I was not interested in moving my office. I spoke about how Dr. Joycelyn Elders had created the office to be a voice for minority health. On 11/23/21, I was informed that my office would be audited. On 1/10/22, I received a copy of the audit. I was given 4 days to respond. I requested an extension so that I could respond to each allegation. On 1/12/22, I was told not to contact any staff. On 1/19/22, I was removed from all financial responsibilities. On 2/10/22, I received an email from Jo Thompson with the results of the findings. I was accused of not following the evaluation process for vendors and bidding process and obtaining quotes; not following the state procurement manual when securing low-cost contract value for contracting bids under 75,000, contracting with vendors prior to authorization, falsified documents of a vendor by submitting a signature from an old MOA, engaged in split purchasing to stay under a small order threshold. Human Resources asked, did I instruct</p>							
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		<b>NOTARY - When necessary for State and Local Agency Requirements</b>					
I declare under penalty of perjury that the above is true and correct.  <b>Digitally Signed By: Dr. Michelle R. Smith</b> <b>03/03/2022</b>  <div style="text-align: right;"><small>Charging Party Signature</small></div>		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. <b>SIGNATURE OF COMPLAINANT</b>  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <small>(month, day, year)</small>					

PLAINTIFF'S EXHIBIT

A

EEOC Form 5 (11/09)

<p align="center"><b>CHARGE OF DISCRIMINATION</b></p> <p align="center"><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p><b>Charge Presented To:</b> <b>Agency(ies) Charge No(s):</b></p> <p align="center">EEOC <b>493-2022-00698</b></p>
<p align="center"><b>Not Applicable</b> <span style="float: right;">and EEOC</span></p> <p align="center"><small>State or local Agency, if any</small></p>	
<p>an employee to perform DJ duties at the Little Rock Air Force Base? On 2/12/22, I received an email that effective 2/14/22. I contacted Reggie Rogers and complained that this was a demotion. I believe I was subjected to different terms and conditions of employment and demoted because of my race, African American and retaliated against because of complained about race discrimination and pay disparity between black and white employees, in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>	

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p><small>NOTARY – When necessary for State and Local Agency Requirements</small></p>
<p>I declare under penalty of perjury that the above is true and correct.</p> <p><b>Digitally Signed By: Dr. Michelle R. Smith</b></p> <p><b>03/03/2022</b></p> <p align="right"><small>Charging Party Signature</small></p>	<p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p><b>SIGNATURE OF COMPLAINANT</b></p> <p><b>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</b> <small>(month, day, year)</small></p>



# U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Little Rock Area Office  
820 Louisiana St, Suite 200  
Little Rock, AR 72201  
(501) 900-6130  
Website: [www.eeoc.gov](http://www.eeoc.gov)

## **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 01/27/2023

To: Dr. Michelle R. Smith



Charge No: 493-2022-00698

EEOC Representative and email: JOHNNY GLOVER  
Investigator  
[johnny.glover@eeoc.gov](mailto:johnny.glover@eeoc.gov)

### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 493-2022-00698.

On behalf of the Commission,

Digitally Signed By: Edmond Sims  
01/27/2023

Edmond Sims  
Acting District Director

PLAINTIFF'S EXHIBIT

**B**

**Cc:**

**Sherri Simpson**  
**Arkansas Department of Health**  
**4815 West Markham St. Slot 26**  
**Little Rock, AR 72205**

**Reginald A Rogers**  
**Arkansas Department of Health**  
**4815 W MARKHAM ST SLOT 31**  
**Little Rock, AR 72205**

**Please retain this notice for your records.**

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**DR. MICHELLE R. SMITH**

**PLAINTIFF**

**v.**

**CASE NO. 4:23-CV-359-JM-PSH**

**STATE BOARD OF HEALTH AND  
ARKANSAS DEPARTMENT OF HEALTH**

**DEFENDANTS**

**AMENDED AND SUBSTITUTED ANSWER**

Comes now Defendants, State Board Of Health and Arkansas Department Of Health, by and through undersigned counsel, and for their Amended and Substituted Answer ("Answer"), state:

1. In Response to Paragraph "Introduction" of the Complaint (Doc. 1) (hereinafter referred to as "Complaint"), Defendants admit that Plaintiff purports to state a cause of action under Title VII of the Civil Rights Act of 1964 (42 U.S. Code § 2000 *et. seq.*). Defendants deny that Plaintiff has stated any cause of action against Defendants. Defendants specifically and generally deny all allegations not admitted herein.

2. In Response to Paragraph 1 of the Complaint, Defendants do not dispute that this Court has jurisdiction over this case.

3. In Response to Paragraph 2 of the Complaint, Defendants deny that Plaintiff was subjected to any discrimination by Defendants. Defendants specifically and generally deny all allegations not admitted herein.

4. In Response to Paragraph 3 of the Complaint, Defendants do not have personal knowledge about the allegations contained therein, and therefore, deny the same.

5. In Response to Paragraph 4 of the Complaint, Defendants state that this paragraph does not require a response as the statutes speak for themselves, but to the extent a response is required, Defendants deny any and all remaining allegations contained therein.

6. In Response to Paragraph 5 of the Complaint, Defendants state that this paragraph does not require a response as the statutes speak for themselves, but to the extent a response is required, Defendants deny any and all remaining allegations contained therein.

7. In Response to Paragraphs 6 and 7 of the Complaint, Defendants state that these paragraphs contain legal conclusions, and therefore, the allegations contained in paragraphs 6 and 7 of the Complaint are denied.

8. In Response to Paragraph 8 of the Complaint, Defendants admit that Plaintiff was a former employee at Arkansas Department of Health. All allegations not specifically admitted herein are denied.

9. In Response to Paragraphs 9, 10, and 11 of the Complaint, Defendants state that Plaintiff was employed with Arkansas Department of Health during the time period relevant to the Complaint. Upon information and belief, in 2010, Plaintiff was employed as Minority Health and Health Disparity Director. All allegations not specifically admitted herein are denied.

10. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 12 of the Complaint, and such allegations therefore are denied.

11. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 13 of the Complaint, and such allegations therefore are denied.

12. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 14 of the Complaint, and such allegations therefore are denied.

13. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 15 of the Complaint, and such allegations therefore are denied.

14. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 16 of the Complaint, and such allegations therefore are denied.

15. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 17 of the Complaint, and such allegations therefore are denied.

16. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 18 of the Complaint, and such allegations therefore are denied.

17. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 19 of the Complaint, and such allegations therefore are denied.

18. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 20 of the Complaint, and such allegations therefore are denied.

19. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 21 of the Complaint, and such allegations therefore are denied.

20. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 22 of the Complaint, and such allegations therefore are denied.

21. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 23 of the Complaint, and such allegations therefore are denied.

22. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 24 of the Complaint, and such allegations therefore are denied.

23. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 25 of the Complaint, and such allegations therefore are denied.



24. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 26 of the Complaint, and such allegations therefore are denied.

25. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 27 of the Complaint, and such allegations therefore are denied.

26. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 28 of the Complaint, and such allegations therefore are denied.

27. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 29 of the Complaint, and such allegations therefore are denied.

28. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 30 of the Complaint, and such allegations therefore are denied.

29. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 31 of the Complaint, and such allegations therefore are denied.

30. In Response to paragraph 32 of the Complaint, Defendants do not dispute that Plaintiff went on military leave. All remaining allegations are denied.

31. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 33 of the Complaint, and such allegations therefore are denied.

32. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 34 of the Complaint, and such allegations therefore are denied.

33. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 35 of the Complaint, and such allegations therefore are denied.

34. In Response to paragraph 36 of the Complaint, the audit speaks for itself. All remaining allegations are denied.

35. In Response to paragraph 37 of the Complaint, the audit speaks for itself. All remaining allegations are denied.

36. In Response to paragraph 38 of the Complaint, the audit speaks for itself. All remaining allegations are denied.

37. In Response to paragraph 39 of the Complaint, the audit speaks for itself. All remaining allegations are denied.

38. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 40 of the Complaint, and such allegations therefore are denied.

39. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 41 of the Complaint, and such allegations therefore are denied.

40. Defendants are without sufficient knowledge or information to admit or deny the allegations contained in paragraph 42 of the Complaint, and such allegations therefore are denied.

41. In Response to paragraph 43 of the Complaint, the audit speaks for itself. All remaining allegations are denied.

42. Defendants deny all allegations contained in paragraph 44 of the Complaint.

43. With regard to the allegations contained in paragraph 45 of the Complaint, no response is required but to the extent a response is required, Defendants deny any and all allegations contained therein.

44. Defendants deny all allegations contained in paragraph 46 of the Complaint.

45. Defendants deny all allegations contained in paragraph 47 of the Complaint.

46. Defendants deny all allegations contained in paragraph 48 of the Complaint.

47. Defendants deny all allegations contained in paragraph 49 of the Complaint.

48. With regard to the allegations contained in paragraph 50 of the Complaint, no response is required but to the extent a response is required, Defendants deny any and all allegations contained therein.

49. Defendants deny all allegations contained in paragraph 51 of the Complaint.

50. Defendants deny all allegations contained in paragraph 52 of the Complaint.

51. Defendants deny all allegations contained in paragraph 53 of the Complaint.

52. Defendants deny all allegations contained in paragraph 54 of the Complaint.

53. Defendants deny all allegations contained in paragraph 55 of the Complaint.

54. Defendants deny all allegations contained in paragraph 56 of the Complaint.

55. Defendants deny all allegations contained in paragraph 57 of the Complaint.

56. Defendants deny all allegations contained in paragraph 58 of the Complaint.

57. With regard to the allegations contained in paragraph 59 of the Complaint, no response is required but to the extent a response is required, Defendants deny any and all allegations contained therein.

58. In Response to paragraph 60 of the Complaint, the Charge speaks for itself. All remaining allegations are denied.

59. In Response to paragraph 61 of the Complaint, the Charge speaks for itself. All remaining allegations are denied. 5

60. In Response to paragraph 62 of the Complaint, the Charge speaks for itself. All remaining allegations are denied.

61. With regard to the allegations contained in paragraph 63 of the Complaint, no response is required but to the extent a response is required, Defendants deny any and all allegations contained therein.

- 62. Defendants deny all allegations contained in paragraph 64 of the Complaint.
- 63. Defendants deny all allegations contained in paragraph 65 of the Complaint.
- 64. Defendants deny that Plaintiff is entitled to any relief.
- 65. Defendants demand a trial by jury.
- 66. Defendants assert that Plaintiff is not entitled to any relief as requested in the “THEREFORE” paragraph on page 11 of the Complaint.
- 67. Defendants deny any and all allegations not specifically admitted herein.
- 68. Defendants assert that employment decisions made concerning the Plaintiff were made for non-discriminatory and non-retaliatory purposes and the business judgment rule applies.
- 69. Defendants reserve the right to amend this pleading and to assert additional affirmative defenses upon further fact investigation and discovery.

#### **Affirmative Defenses**

Pleading further and in the affirmative, Defendants state:

- 70. The Complaint fails to state a claim upon which relief can be granted as against Defendants.
- 71. The Complaint fails to state facts upon which damages or any other relief may be awarded.
- 72. Plaintiff's claims are barred by the applicable statute of limitations.
- 73. Plaintiff's claims are barred by the doctrines of *res judicata* and collateral estoppel.
- 74. Plaintiff's claims are barred by the doctrine of laches (or equitable estoppel).
- 75. Plaintiff failed to mitigate damages.
- 76. Plaintiff is barred from filing a Title VII action because he has failed to meet the procedural prerequisites for a Title VII filing.

77. Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.

78. Plaintiff is not entitled to the damages and other relief requested.

79. The employment decisions with regard to Plaintiff were based on nondiscriminatory reasons and that the business-judgment rule applies.

80. Plaintiff's claims against Defendants, regardless of the relief sought, are barred by the doctrine of sovereign immunity.

81. Plaintiff did not suffer any injury.

82. Defendants reserve the right to amend or supplement this pleading as defenses become apparent or available during the course of litigation.

83. Plaintiff failed to exhaust administrative remedies on all of her claims prior to filing of this lawsuit.

84. Plaintiff is not entitled to the damages and other relief requested.

85. Plaintiff failed to properly serve Defendants with the Complaint in accordance with the Federal Rules of Civil Procedure.

**WHEREFORE**, Defendants respectfully requests that Plaintiff's Complaint be dismissed, and for all other just and proper relief it is entitled.

Respectfully submitted,

TIM GRIFFIN  
Attorney General

By: Maryna Jackson  
Ark Bar No. 2009111  
Senior Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, AR 72201

Phone: (501) 683-3296  
Fax: (501) 682-2591  
Email: maryna.jackson@arkansasag.gov

**CERTIFICATE OF SERVICE**

I, Maryna Jackson, hereby certify that on July 5, 2023, I electronically filed the foregoing  
with the Clerk of the Court using the CM/ECF system:

Mr. Austin P. Porter  
Porter Law Firm  
323 Center Street, Suite 1035  
Little Rock, AR 72201

Maryna Jackson



**SETTLEMENT AGREEMENT AND RELEASE**

**WHEREAS** the Plaintiff Michelle R. Smith (“Plaintiff” or “Smith”) brought suit in the United States District Court for the Eastern District of Arkansas against the Defendants Arkansas Board of Health and Arkansas Department of Health (“Defendants”) (Plaintiff and Defendants referred to herein collectively as the “Parties”) in the lawsuit captioned *Michelle R. Smith, Ph.D. v. State Board of Health, A Body Politic and Corporate and Arkansas Department of Health, A Body Politic and Corporate*, Case Number 4:23-cv-23-00359-JM-PSH (the “Litigation”); and

**WHEREAS** Plaintiff alleged, *inter alia*, claims of race discrimination and retaliation against her by the Defendants in the Litigation; and

**WHEREAS** the Parties to the Litigation are represented by counsel; and

**WHEREAS**, subject to the terms set forth herein, the Parties have reached an agreement to fully and finally resolve any and all claims and disputes by and between them which were brought or that could have been brought in the Litigation; and

**WHEREAS** the Parties desire to avoid further expense, time, effort and uncertainty in regard to the Litigation.

**NOW, THEREFORE**, the Plaintiff and the Defendants enter into this Settlement Agreement and Release (the “Agreement”) setting forth the following terms as full and final satisfaction of any and all claims made in the case of *Michelle R. Smith, Ph.D. v. State Board of Health, A Body Politic and Corporate and Arkansas Department of Health, A Body Politic and Corporate*, Case Number 4:23-cv-23-00359-JM-PSH:

**1. ACTION TO BE TAKEN BY DEFENDANT.** Defendant Arkansas Department of Health (“ADH”) agrees to pay Plaintiff the amount of \$95,000.00 (ninety-five thousand dollars). Payment shall be in the form of two checks. One check in the amount of \$40,000.00 (forty



thousand dollars) will be made payable to Austin Porter, attorney at Law for attorney's fees and costs; the other check, in the amount of \$55,000.00 (fifty-five thousand dollars) will be made payable to Michelle R. Smith. This payment is conditioned on approval and appropriation for the payment in the amount of \$95,000 by the Arkansas Legislature.

**2. ACTION TO BE TAKEN BY PLAINTIFF.** Plaintiff will move to voluntarily dismiss the Litigation with prejudice.

**3. COMPLETE RELEASE AND WAIVER.** Plaintiff hereby waives, releases, relinquishes and forever discharges the Arkansas Board of Health, the Arkansas Department of Health, their officers, members, directors, officials, employees, agents, attorneys and assigns, from all claims, liens, or causes of action, known or unknown, arising out of Plaintiff's claims raised in the case of *Michelle R. Smith, Ph.D. v. State Board of Health, A Body Politic and Corporate and Arkansas Department of Health, A Body Politic and Corporate*, Case Number 4:23-cv-23-00359-JM-PSH, including any other unspecified issues raised in the Litigation for damages, attorneys' fees, costs, recovery or relief of any type.

**4. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties. The terms of this Agreement are contractual and not a mere recital. A breach of any portion of this Agreement shall give the non-breaching Party a cause of action for breach of contract in an appropriate tribunal possessing jurisdiction over such a claim. Plaintiff and Defendant have not relied upon any promise or statement, oral or written that is not set forth in this Agreement.

**5. MODIFICATION.** Plaintiff and Defendant agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all Parties.

6. **VOLUNTARY AGREEMENT.** Plaintiff and Defendant acknowledge that each has read this Agreement, that each has had the opportunity to consult with legal counsel concerning the advisability, meaning and effect of this Agreement, and that each has signed this Agreement voluntarily and without duress. Plaintiff and Defendant knowingly and freely enter into this Agreement.

7. **NO RESCISSION FOR MISTAKE.** Plaintiff and Defendant acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the Action and any additionally waived and released claims to the extent each deems necessary and appropriate. Plaintiff and Defendant assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

8. **NO ADMISSION OF LIABILITY.** Plaintiff and Defendant acknowledge that this Agreement is a compromise and is not an admission of liability or wrongdoing on the part of the Defendants, or any officer, member, director, official, employee, agent, attorney or assign of any Defendant. Plaintiff agrees not to suggest or construe this Agreement as an admission or implication of any wrongdoing and that the Agreement is not admissible in any court or administrative body except as necessary to enforce its terms or as otherwise required by law. Plaintiff agrees that any disclosure about this case or settlement, orally or in writing, will not make reference to guilt, liability, or wrongdoing of any of the Parties, and will include a statement that the Defendants did not admit liability, and the matter was settled to bring finality to the litigation.

9. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

**10. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon Plaintiff and the Defendants and each of their respective heirs, descendants, successors and assigns.

**11. EFFECTIVE DATE.** This Agreement shall not become effective until signed by both Parties.

**12. COUNTERPARTS.** This Agreement may be executed in counterparts and the counterparts taken together will have binding effect.

**13. DEFAULT / BREACH.** No interest shall accrue on the payment due from the Arkansas Department of Health to the Plaintiff.

**14. TAX CONSEQUENCES.** Defendants make no representation regarding the tax treatment of the payment under this Agreement. The Parties agree that Plaintiff will be responsible for any taxes due on said payment.

**AGREED AND CONSENTED TO AND IN WITNESS WHEREOF,** we have set our hands on the dates indicated below:

**ARKANSAS DEPARTMENT OF HEALTH**

**MICHELLE R. SMITH**

By: 

Don Adams

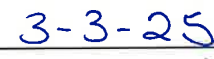
Chief of Staff

Arkansas Department of Health



Michelle R. Smith

2/28/2025

  
Date

Date