

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CATHERINA LORENA CENZON-DECARLO,

Plaintiff,

-against-

THE MOUNT SINAI HOSPITAL, a New York
Not-for-Profit Corporation, ELEONORA SHAPIRO,
MICHAEL SILVERSTEIN, M.D., and MAURA
FRAN CARPO,

Defendants.
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Index No.:
Date Purchased:

VERIFIED COMPLAINT

The Plaintiff, CATHERINA LORENA CENZON-DECARLO by her attorneys Ruta & Soulios LLP, complaining of the defendants, respectfully alleges:

PARTIES

1. Plaintiff Catherina Lorena Cenzon-DeCarlo is a natural person who at all times relevant to this action has resided in Brooklyn, New York, County of Kings and has been employed by Mount Sinai Hospital.

2. Mrs. DeCarlo became an American citizen in March 2010. During all other events giving rise to this lawsuit she has been a citizen of the Philippines and, since 2001, a permanent legal resident of the United States. She is married to an American citizen, Paul DeCarlo, also of Brooklyn.

3. Defendant The Mount Sinai Hospital is a not-for-profit corporation organized under the laws of the State of New York, and is located at One Gustave L. Levy Place, New York, New York, 10029 and at 2510 30th Avenue, Astoria, New York 11102.

4. Upon information and belief, defendant Eleonora Shapiro RN, MHA, is an employee of Mount Sinai and holds the title Senior Clinical Director for Perioperative Services at Mount Sinai, at One Gustave L. Levy Place, New York, New York, 10029.

5. Upon information and belief, defendant Eleonora Shapiro was, and still is, a resident of the County of New York, State of New York.

6. At all times herein mentioned, defendant Maura Fran Carpo, MSN, RN, CNOR, is an employee of Mount Sinai and is a nurse supervisor employed at Mount Sinai, at One Gustave L. Levy Place, New York, New York, 10029.

7. Upon information and belief, defendant Maura Fran Carpo was, and still is, a resident of the County of New York, State of New York.

8. Defendant Michael Silverstein, M.D., exerts supervisory authority over nurses assigned to his cases at Mount Sinai, and is a member of Mount Sinai's faculty. His private business office is located at 70 East 90th Street, New York, New York, 10128.

9. Upon information and belief, defendant Michael Silverstein, M.D. maintained his principal place of business within the County of New York, State of New York.

STATEMENT OF FACTS

10. Catherina Cenzone DeCarlo has devoted her career to the profession of operating room nursing.

11. She chose nursing over more lucrative careers because of her passion for helping patients and the fulfillment she receives from assisting in a wide variety of specialized procedures with excellence and professionalism.

12. Mrs. DeCarlo is a practicing member of the Roman Catholic Church. Her uncle is a bishop of that Church in the Philippines, and she was raised in a very devout Catholic family that was immersed in the religious culture of her community.

13. She has a strongly-held religious and moral belief that she may not participate in abortion procedures that kill preborn children.

14. Mrs. DeCarlo received her initial training and experience in nursing in her home country of the Philippines.

15. Mrs. DeCarlo graduated with a Bachelor of Science degree in nursing from St. Louis University in Baguio City, Philippines, in 1995. She passed the Philippine Board to become a Registered Nurse, she was certified by the Commission on Graduates of Foreign Nursing Schools, and she passed the TOEFL and TSE exams in English language proficiency. Mrs. DeCarlo was issued a visa screen certificate.

16. Mrs. DeCarlo served for one year in the Philippine National Red Cross working in several areas including rescue and first aid training. Then she worked for one year as a volunteer nurse in the medical unit of Baguio General Hospital and Medical Center.

17. In 1997 Mrs. DeCarlo switched fields and began working as a pharmaceutical representative, though she continued volunteering as a nurse during that time. Despite making more money than she had as a nurse, she missed the rewards and challenges of her nursing career.

18. Therefore Mrs. DeCarlo returned to nursing full-time. In 1998 she began as a staff nurse at The Medical City, a major hospital in Mandaluyong City, Philippines, near Manila.

19. While at The Medical City, she worked as an operating room, labor and delivery, and recovery room nurse. She also specialized in kidney transplants, ophthalmic, ear/nose/throat, plastic and vascular surgeries.

20. During her time at Medical City, Mrs. DeCarlo treated many patients with pregnancy complications, including many with preeclampsia. She gained extensive experience in managing such patients with the goal of preserving the life of both the woman and her unborn child. She gained knowledge of the pathologies that can arise in such patients and how to treat them. She saw that as long as they were properly monitored and medicated, patients could be successfully managed to a stage of pregnancy where the child could be delivered alive with a good chance of survival.

21. While at Medical City Mrs. DeCarlo spoke with colleagues who had trained and worked in the United States. She learned that America offered experienced nurses such as herself tremendous opportunities to work on challenging and interesting cases, and to have the freedom to excel in their professions if they worked hard and continued to improve their skills.

22. Inspired by these stories, Mrs. DeCarlo moved to New York in 2001 to work under an alien worker immigrant visa.

23. Mrs. DeCarlo initially held staff nursing jobs at a rehabilitation facility and then at an acute care teaching hospital in Far Rockaway, New York. At the latter, she served in the endoscopy, ambulatory surgery and medical-surgical units and assisted in many surgical cases as well as providing total nursing care of patients.

24. In 2003 Mrs. DeCarlo was hired as an operating room and endoscopy staff nurse at a community teaching hospital in Far Rockaway, New York. She assumed circulating and scrub nurse responsibilities and covered many surgical cases in an environment where comprehensive knowledge and practice of nursing theories were promoted.

25. In July 2004, Mrs. DeCarlo met Paul DeCarlo of Brooklyn, and they married in 2005.

26. At the time of this complaint, Mr. and Mrs. DeCarlo have a two-year-old child.
27. The DeCarlos are dependent on both Mr. and Mrs. DeCarlo's salaries, including the many on-call shifts that Mrs. DeCarlo works each month at Mount Sinai.
28. In August 2004, Mrs. DeCarlo was hired as an operating room nurse at The Mount Sinai Hospital.
29. Mrs. DeCarlo wanted to work at Mount Sinai because of their expertise in various and complicated surgeries, including liver transplants and neurosurgery.
30. At Mount Sinai, Mrs. DeCarlo has received exemplary performance reviews.
31. She has also earned the respect and professional appreciation of her superiors and of the doctors on whose cases she has worked.
32. Mrs. DeCarlo is recognized at Mount Sinai as having a high level of expertise among her operating room nurse peers, being experienced and highly competent in neurosurgery, gynecology, urology, orthopedics, ophthalmology, and liver transplants, as well as general surgery, vascular, otolaryngology, gastrointestinal, oral surgery, respiratory surgery, and plastic surgery.
33. During her job interview with Mount Sinai in 2004, Mount Sinai officials asked Mrs. DeCarlo about her willingness to assist in abortions.
34. Mrs. DeCarlo communicated that because of her religious views she objected to assisting in any abortion of children still living, though she did not have an objection to assisting with the removal of babies who had miscarried.
35. The Mount Sinai officials who hired Mrs. DeCarlo expressed no concerns with her objection to assisting in abortion.

36. When Mrs. DeCarlo was hired in 2004 and continuing through the present, Mount Sinai Hospital has had a written policy by which it represents to employees that they may, without penalty, object to assisting in abortion consistent with patient rights, care and treatment. That policy, Human Resources Policy—Exclusion from Patient Care—Employee Rights #15.3, is attached as Exhibit A.

37. As part of her application process, Mrs. DeCarlo filled out a form given to her by Mount Sinai, which explicitly gave her the opportunity to object to participation in abortion.

38. Consistent with her statements during her job interviews, Mrs. DeCarlo filled out the sections of that form expressing her objection to participation in abortion.

39. Neither her oral nor her written objection to participation in abortion was an obstacle to Mrs. DeCarlo being hired in August 2004.

40. In addition to working full-time work weeks at Mount Sinai, Mrs. DeCarlo often worked on-call shifts on weekends and holidays.

41. On-call shifts are a benefit and privilege of employment for qualified nursing employees at Mount Sinai such as Mrs. DeCarlo.

42. Qualified employees are allowed to volunteer for these on-call shifts, but if there are not enough volunteers, Mount Sinai will assign employees to the shifts on a mandatory basis.

43. Mount Sinai required Mrs. DeCarlo to be willing to work on-call shifts as a condition of employment.

44. Employees on the on-call shifts earn a fraction of their regular hourly rate when not called, and an increased hourly rate when they are called.

45. The on-call shifts are separated into three teams according to employee expertise.

46. "Team 1" handles surgeries of a basic expertise level for operating room nurses at Mount Sinai, and its scope includes general surgery, vascular, otolaryngology, G.I., oral surgery, respiratory surgery, and plastic surgery.

47. "Team 2" handles complex and specialized surgeries, including neurosurgery, gynecology, urology, orthopedics, and ophthalmology.

48. A third team handles liver transplants, also a specialized procedure.

49. Despite these team designations, nurses who volunteer for and are serving on one team may be assigned by Mount Sinai to handle a surgery encompassed by another team if other nurses are unavailable and if the nurse has the requisite competence for the procedure.

50. Mrs. DeCarlo is experienced and competent in the surgeries of all three teams.

51. Mrs. DeCarlo is so proficient in Team 2 surgeries that Mt. Sinai has asked her on many occasions to take Team 2 calls when other nurses have chosen not to take them.

52. Mrs. DeCarlo has always performed her on-call duties with the utmost level of expertise and professionalism.

53. In a typical month, Mrs. DeCarlo has taken 8-9 on-call shifts of various kinds, tending to focus on Team 2 surgeries.

54. Mount Sinai also performs abortions, which are generally scheduled for Saturday mornings.

55. Many abortions that occur at Mount Sinai outside of Saturday mornings are dilation and curettage (D&C) first-trimester abortions.

56. D&C is also used in cases where preborn children have miscarried, in order to remove the baby and other uterine contents from the woman.

57. In a dilation and evacuation (D&E) abortion, the mother's cervix is dilated, and after sufficient dilation the mother is placed under anesthesia or sedation. The doctor then inserts grasping forceps through the mother's cervix and into the uterus. The doctor grips a part of the preborn child with the forceps and pulls it back through the cervix and vagina even after meeting resistance from the cervix. That friction causes the preborn child to tear apart. The process of evacuating the preborn child piece by piece continues until the child has been completely removed.

58. Even though gynecology is a Team 2 category, D&C and D&E abortions are sufficiently simple that operating room nurses who qualify for Team 1 are technically competent to participate in those procedures.

59. Mrs. DeCarlo has handled and is willing to participate in D&C miscarriage cases, but not in D&C or other abortion cases where the procedure intentionally kills the child, such as D&E abortions.

60. Mount Sinai has known Mrs. DeCarlo's views on her willingness to assist in abortion since it hired her.

61. Mount Sinai has a group of nurses who are willing to participate in abortions and regularly do so when asked.

62. From August 2004 to mid-May 2009, there were some times when Mount Sinai specifically avoided assigning Mrs. DeCarlo to abortion cases by means of choosing not to call Mrs. DeCarlo to those cases in the first place.

63. In at least one instance between August 2004 to mid-May 2009, when Mrs. DeCarlo was called to work on an abortion case, Mrs. DeCarlo clarified that she only handles miscarriage cases, and Mount Sinai arranged for another nurse to take the case.

64. Upon information and belief, from August 2004 to mid-May 2009 Mount Sinai sometimes violated the right of conscience of other nurses by forcing them to assist in abortions to which they expressed a religious or moral objection.

65. On Sunday, May 24, 2009, Mrs. DeCarlo was working on call on Team 2.

66. Her shift began at 7:00 a.m.

67. Team 1 and 2 on-call nurses have the option of being off campus if they can arrive at the hospital within 30 minutes of the call and be scrubbed within 5 minutes of arrival. Alternatively, the nurses can stay in the on-call room at Mount Sinai during their shift.

68. Mrs. DeCarlo always stays in the on-call room for her on-call shifts, and that is where she went at 7:00 am on May 24th. On that day, because of mechanical work in the facility, nurses were directed to the OR patient holding area on the sixth floor of the Annenberg building on Mount Sinai's campus.

69. Earlier in the morning of May 24th, Dr. Michael Silverstein, Assistant Clinical Professor at the medical school that is part of Mount Sinai, had scheduled a woman for a 20-week age of gestation abortion (that later was revealed to be a 22-week age of gestation abortion) to occur that morning. Dr. Silverstein scheduled the abortion via telephone through the gynecology resident on-duty, Dr. Noel Strong, who booked the case with the OR receptionist, Mr. Byron Alvarado.

70. The abortion would be done by D&E on a preborn child still alive. The abortion was scheduled to occur on the sixth floor of the Annenberg building.

71. At 7:15 am, Mrs. DeCarlo walked down the hall to the receptionist in the Annenberg building to see if she had been assigned to any surgeries.

72. The receptionist told her she was assigned to a "D&C" case.

73. Neither the receptionist (according to what he told Mrs. DeCarlo later) nor Mrs. DeCarlo knew that she was being assigned to a second-trimester abortion on a live child.

74. Mrs. DeCarlo immediately went to the assigned surgery room and began preparing the room. The patient was not yet present.

75. While she was in the room, the case cart arrived with instruments that Mrs. DeCarlo recognized as being possibly used for non-miscarriage abortions.

76. She then examined the paperwork for the case more closely. The case form that Mrs. DeCarlo saw had virtually illegible handwriting.

77. Mrs. DeCarlo began to wonder whether the abortion was on a live child, and what the patient's diagnosis was.

78. At 7:30 am, Mrs. DeCarlo called the resident who had booked the case for Dr. Silverstein, Dr. Noel Strong.

79. She asked Dr. Strong about the case. Dr. Strong explained to her that the case was a D&E, that the woman was diagnosed with preeclampsia, and that the preborn child in the case was still alive.

80. Mrs. DeCarlo then knew that she had been assigned to a case where a living 22-week-old preborn child would be dismembered and killed.

81. Mrs. DeCarlo also knew from experience that the mother had a diagnosis that she had personally treated in many women without any need to kill the child.

82. At 7:30 am, Mrs. DeCarlo, consistent with her prior written objection to participating in abortion, unequivocally expressed to Dr. Strong that she would not participate in the abortion.

83. Mrs. DeCarlo told Dr. Strong not to send the case up to the room until a nurse was assigned who would handle the case.

84. Mrs. DeCarlo then immediately called her nursing supervisor, Defendant Maura Fran Carpo, and expressed her objection to participating in this case.

85. Mrs. DeCarlo reminded Ms. Carpo that her religious objection was known, was longstanding, and that she had not previously been forced to assist in an abortion.

86. Ms. Carpo said she would call her supervisor, Defendant Eleonora Shapiro, to ask whether Mrs. DeCarlo could be excused from the case.

87. Ms. Carpo said that in the meantime Mrs. DeCarlo should call the receptionist to begin gathering contact information for other nurses who could cover this case. Mrs. DeCarlo did so.

88. In a few minutes the OR receptionist Ms. Keisha Bedward called Mrs. DeCarlo and told her to call Ms. Carpo. She did so, and Ms. Carpo told Mrs. DeCarlo that Mrs. DeCarlo must assist in the 22-week D&E abortion.

89. Mrs. DeCarlo repeated her longstanding objection and pleaded with Ms. Carpo that Mount Sinai not force her to assist in this abortion against her strongly held religious beliefs.

90. Mrs. DeCarlo asked Ms. Carpo to call other nurses to the case since so little time had elapsed before Mrs. DeCarlo had voiced her objection.

91. Ms. Carpo said that Ms. Shapiro had insisted that Mrs. DeCarlo assist on the case, and had prohibited Ms. Carpo from even trying to call other nurses to cover the case.

92. Ms. Carpo also said that Dr. Silverstein had yelled at her over the phone in opposition to any delay in the case as a result of Mrs. DeCarlo's request for accommodation.

93. Ms. Carpo claimed that the mother could die if Mrs. DeCarlo did not assist in the abortion.

94. Mrs. DeCarlo explained to Ms. Carpo that the patient could not be in such immediate danger because based on what Dr. Silverstein had told Ms. Carpo over the phone, the patient was not even on magnesium therapy, which is a medical requirement for preeclamptic patients in crisis. But Ms. Carpo rejected this argument.

95. Neither Mount Sinai, nor the patient's care, would have been prejudiced in any way if Mount Sinai had called another nurse to take the case when Mrs. DeCarlo expressed her specific objection 15 minutes after she was called to the case.

96. Ms. Carpo herself was qualified to perform this case herself and could have done so without any significant delay in the case.

97. Ms. Carpo said that if Mrs. DeCarlo did not participate in the case, Mrs. DeCarlo would be brought up on charges of "insubordination and patient abandonment."

98. A charge of patient abandonment would severely jeopardize Mrs. DeCarlo's employment and her nursing license and consequently her career and her and her family's livelihood. Mrs. DeCarlo had not yet seen the patient in this case.

99. A charge of insubordination would severely jeopardize Mrs. DeCarlo's employment and her future employability.

100. Mrs. DeCarlo began to cry and said she would even get her priest on the phone to explain that she could not assist in the killing of a 22-week-old child, and pleaded for this reason to be excused from the case.

101. Despite all of Mrs. DeCarlo's urgings, Ms. Carpo insisted that Mrs. DeCarlo participate in the abortion case.

102. Mrs. DeCarlo was distraught and devastated because Mrs. DeCarlo and her family could not afford for her to lose her job or her nursing license.

103. Mrs. DeCarlo therefore stated that she was acceding to Ms. Carpo's dictate, though in protest.

104. Mrs. DeCarlo returned to the surgery room and finished her pre-surgery duties.

105. She treated the patient with utmost respect and professionalism.

106. She made sure that the patient had no knowledge of her opposition to participating.

107. Nevertheless, the scrub technician and the anesthesiologist on the case expressed surprise to see Mrs. DeCarlo assisting.

108. Mrs. DeCarlo explained to them, outside of the patient's presence, that she was being forced to participate under protest, but that she would maintain excellent care for the patient.

109. The scrub technician and anesthesiologist expressed complete sympathy with Mrs. DeCarlo.

110. By being forced to participate in the abortion, Mount Sinai forced Mrs. DeCarlo to witness the killing of a 22-week-old preborn child by dismemberment.

111. Because it was included in the requirements of her nursing duties as an assistant on the case, Mount Sinai forced Mrs. DeCarlo to watch the doctor as he was removing the bloody parts of the child from its mother's body with forceps, and during the procedure to see the baby's arms and legs on the prep table, as well as Dr. Silverstein's gown covered in blood.

112. Because it was included in the requirements of her nursing duties as an assistant on the case, Mount Sinai forced Mrs. DeCarlo to view the bloody body parts of the 22-week-old preborn child in the specimen cup, to put saline in the cup, and to take it to the specimen area.

113. Mount Sinai's protocols contain several categories of surgeries to identify their urgency and priority, including various levels of emergencies. Exhibit B.

114. Surgeries placed in Category I involve "Patients requiring immediate surgical intervention for life or limb threatening conditions." *Id.*

115. None of the Mount Sinai officials or doctors on this abortion case labeled it a surgery requiring immediate surgical intervention for life or limb threatening conditions.

116. Instead Dr. Silverstein labeled the abortion a Category II, which applies to "Patients requiring surgery within 6 hours of identification and notification." *Id.*

117. The Category II designation of this abortion shows that the patient did not require Mrs. DeCarlo's immediate surgical intervention assistance.

118. At 7:30 a.m. when Mrs. DeCarlo was ordered to assist in this abortion, there was plenty of time to find a nurse to assist the surgery even within the specifications of Category II.

119. This abortion did not even rise to the level of a Category II surgery that had to be done within 6 hours.

120. Likewise, there was no need to perform actions within six hours that intentionally killed the child such as a D&E abortion.

121. The patient could have been maintained in stable condition until Mount Sinai assigned a nurse other than Mrs. DeCarlo to the case who would be willing to assist the abortion.

122. Mrs. DeCarlo observed no indications that this abortion was a medical emergency requiring her assistance.

123. For example, when the patient was brought into the room for surgery, her blood pressure was not at a crisis value, and other standard measures for patients in crisis had not been taken on this patient.

124. Preeclamptic patients can be kept stable until later in pregnancy when labor can be induced or a c-section performed so that the child is delivered intact, is not directly killed, and has a chance to survive.

125. Mount Sinai violated HR/ER # 15.3 when Ms. Carpo and Ms. Shapiro ordered Mrs. DeCarlo to assist in this abortion.

126. Being forced to assist in this abortion has caused Mrs. DeCarlo extreme emotional, psychological, and spiritual suffering.

127. Mrs. DeCarlo has experienced nightmares about children in distress, has lost sleep, and has suffered in her personal and religious relationships because of being forced to assist in this abortion.

128. Mrs. DeCarlo has had to receive treatment from her attending physician to address her psychological symptoms. He prescribed medication to help her sleep. She has also had to receive treatment from a psychologist on a regular basis.

129. On the next business day after the abortion, Mrs. DeCarlo brought complaints to her supervisors and her union about having been forced to assist in an abortion.

130. Based on being forced to assist in this abortion, Mrs. DeCarlo caused a grievance to be filed with her union and supervisors for violation of the collective bargaining agreement between Mount Sinai and the New York State Nurses Association.

131. In informal conversations with Mrs. DeCarlo and union representatives, Mount Sinai officials stated that employees must be willing to assist in abortions in circumstances that Mount Sinai determines, including the circumstances that Mrs. DeCarlo suffered on May 24th.

132. Abortion cases such as the one that occurred on May 24th can arise during on-call shifts or during the work week.

133. Consequently, whether or not Mrs. DeCarlo is assigned to further on-call duty, she reasonably fears that she could again be compelled to participate in an abortion.

134. After having filed her grievance, Mrs. DeCarlo volunteered as usual to be assigned to on-call cases for the next month not yet scheduled, August 2009.

135. On July 1, 2009, the on-call schedule for August was finalized.

136. Mrs. DeCarlo was given only one on-call shift in August 2009, on one liver team shift.

137. Although Mount Sinai officials initially claimed that the failure to assign Mrs. DeCarlo to her usual 8–9 shifts in August was merely inadvertent, the hospital's subsequent actions indicate that it intends to retaliate against Mrs. DeCarlo because of her request that her religious objection to assisting in abortion be honored, and because of the grievance procedure that she filed.

138. On July 9, 2009, Mrs. DeCarlo's union representative Crystal Shipp called her and informed her that Mount Sinai wanted to meet on Thursday, July 16, at noon, to discuss the grievance and whether Mrs. DeCarlo may object to assisting in abortion.

139. On July 16, Mrs. DeCarlo and her attorney Joseph Ruta presented themselves at the meeting location.

140. Ms. Shipp and another representative of the union Ms. Lucille Sollazzo informed Mrs. DeCarlo that neither the union nor Mount Sinai would conduct the meeting if Mr. Ruta was present.

141. Nothing in the bargaining agreement prevents Mr. Ruta from being present at such a meeting.

142. Because Mr. Ruta was present, Mount Sinai and the union cancelled the meeting.

143. This violated the union agreement, which entitles Mrs. DeCarlo to an opportunity to resolve the grievance process through such a meeting.

144. Just a few hours later on July 16, Mrs. DeCarlo was cornered in the hospital by Beata Mastalerz, her clinical manager. Ms. Mastalerz asked Mrs. DeCarlo to come into her office.

145. Ms. Mastalerz told Mrs. DeCarlo that Mrs. DeCarlo's request to be assigned to on-call shifts in September would be conditioned upon Mrs. DeCarlo being willing to write and sign a statement promising that she was willing to assist in D&C and D&E abortions if the hospital declared that such cases were "emergencies" requiring her assistance.

146. Mrs. DeCarlo refused to sign such a statement, saying that she had already signed a notice that she objects to assisting in abortion pursuant to written hospital policy.

147. Ms. Fran Carpo then came into the room and attempted to convince Mrs. DeCarlo to write and sign such a statement. Ms. Carpo was one of the Mount Sinai officials who was to be at the cancelled meeting earlier that day.

148. Mrs. DeCarlo began to cry and continued to refuse, telling Ms. Mastalerz and Ms. Carpo that she had always opposed assisting abortion from the day she was hired, and that other nurses also oppose assisting abortion but they were not being required to sign statements agreeing to assist abortions as a condition that they be assigned to on-call shifts.

149. On information and belief, Mount Sinai has not imposed against any other nurse the requirement that they fill out a specific written expression of willingness to assist in some abortions as a condition of being assigned to on-call shifts.

150. Mrs. DeCarlo asked to leave the room to compose herself but Ms. Mastalerz and Ms. Carpo refused, insisting that she sit down and continuing to try to convince her to sign away her objection to abortion.

151. As Mrs. DeCarlo became more distraught she was finally able to convince Ms. Mastalerz and Ms. Carpo to allow her to leave to compose herself.

152. By imposing this condition, Mount Sinai condoned and acquiesced in the illegal compulsion it had applied to Mrs. DeCarlo on May 24, and it imposed a policy by which it assumed the ability to compel health care personnel assistance in abortion at its discretion.

153. Mrs. DeCarlo will suffer financial damage from being deprived of the income of working on-call shifts.

154. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors because they were following Mount Sinai's policy and practice.

155. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors because it acquiesced and subsequently condoned those actions.

156. Mount Sinai Hospital is liable for the discriminatory actions of Mrs. DeCarlo's superiors under the doctrine of respondeat superior, because those superiors were acting in the scope of their authority from Mount Sinai to alter the terms and conditions of her employment on condition that she succumb to a violation of her conscientious objection rights.

157. Mount Sinai Hospital is liable for discrimination against Mrs. DeCarlo by means of its current position that it has discretion to violate Mrs. DeCarlo's and other health care personnel's conscientious objection to abortion in the future.

158. Mrs. DeCarlo has suffered and continues to suffer emotional and psychological damages from the harm caused to her by Mount Sinai's discrimination.

159. Mrs. DeCarlo will suffer financial damages from Mount Sinai's discriminatory and retaliatory removal of her from on-call shifts on the condition that she sign away her religious objection to assisting in abortions.

160. Mrs. DeCarlo and other similarly situated pro-life employees continue to suffer irreparable harm by Mount Sinai's policy that employee conscience rights may be violated and their work privileges be removed on condition of such violations, thereby giving rise to the need for injunctive relief against Mount Sinai.

FIRST CAUSE OF ACTION:
CLAIM FOR VIOLATION OF PLAINTIFF'S RIGHT TO
EQUAL PROTECTION OF THE LAW PURSUANT TO
ARTICLE I, SECTION 11, OF THE NEW YORK STATE
CONSTITUTION AGAINST ALL DEFENDANTS

161. The allegations of the paragraphs above are reasserted here.

162. Article I, Section 11, of the New York State Constitution requires that no person "because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

163. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein created a hostile work environment based upon Mrs. DeCarlo's religion, took adverse employment actions based upon her religion, altered the terms and conditions of her employment based upon her religion, and violated her civil rights not to be forced to assist abortion due to her religion, and has thereby violated Article I, Section 11, of the New York State Constitution.

164. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

SECOND CAUSE OF ACTION:
CLAIM FOR VIOLATION OF SECTION 3
OF ARTICLE 1 OF THE NEW YORK
STATE CONSTITUTION
AGAINST ALL DEFENDANTS

165. The allegations of the paragraphs above are reasserted here.

166. Article I, Section 3, of the New York State Constitution declares that “The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.”

167. The actions of Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein abridged Mrs. DeCarlo’s rights to free exercise of religion protected by Section 3 of Article I of the New York State Constitution.

168. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

THIRD CAUSE OF ACTION:
VIOLATION OF NEW YORK STATE
EXECUTIVE LAW § 296(1)(a)
AGAINST ALL DEFENDANTS

169. The allegations of the paragraphs above are reasserted here.

170. New York State Executive Law § 296(1)(a) provides that employers may not discriminate in “compensation or in terms, condition or privileges of employment” because of the creed of any individual.

171. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein engaged in discriminatory employment practices, including but not limited to creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Mrs. DeCarlo's employment based upon religion in violation of New York State Executive Law § 296(1)(a).

172. As a proximate result of Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein's intentional unlawful discrimination, Mrs. DeCarlo has suffered and continues to suffer a denial of equal terms, benefits and privileges of employment, mental anguish and emotional distress, monetary damage including lost wages, compensation and/or benefits that she would have received absent Defendant's discrimination. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

FOURTH CAUSE OF ACTION:
VIOLATION OF NEW YORK CITY
EXECUTIVE LAW § 296(7)
AGAINST ALL DEFENDANTS

173. The allegations of the paragraphs above are reasserted here.

174. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein have created a hostile work environment based upon Mrs. DeCarlo's religion, taken adverse employment actions based upon her religion, and altered the terms and conditions of Mrs. DeCarlo's employment base upon her religion.

175. Mrs. DeCarlo opposed, protested and raised valid concerns about the discriminatory working environment.

176. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein were aware of Mrs. DeCarlo's concerns and complaints.

177. Mrs. DeCarlo has been subjected to retaliatory and adverse employment actions by the Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein, including, but not limited to a substantial decrease in the assignment of Mrs. DeCarlo's on-call cases.

178. The retaliatory and adverse employment actions to which Mrs. DeCarlo has been subjected to are directly related to her opposition, concerns and complaints about the hostile working environment created the religious discrimination of the Defendant.

179. The adverse employment actions to which Mrs. DeCarlo has been subjected to by the Defendants constitute unlawful retaliation against her in violation of New York Executive Law § 296(7).

180. As a proximate result of Defendants' intentional unlawful discrimination, Mrs. DeCarlo has suffered and continues to suffer a denial of equal terms, benefits and privileges of employment, mental anguish and emotional distress, monetary damage including lost wages, compensation and/or benefits that she would have received absent Defendants' discrimination. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

FIFTH CAUSE OF ACTION:
VIOLATION OF NEW YORK CITY
ADMINISTRATIVE CODE TITLE 8 § 8-107(1)
AGAINST ALL DEFENDANTS

181. The allegations of the paragraphs above are reasserted here.

182. New York City Admin. Code § 8-107(1)(a) provides that employers may not "because of the actual or perceived [...] creed [...] of any person, [...] refuse to hire or employ or

to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.”

183. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein engaged and continue to engage in discriminatory employment practices, including but not limited to creating a hostile work environment based upon Mrs. DeCarlo’s religion, taking adverse employment actions based upon her religion, and altering the terms and conditions of Mrs. DeCarlo’s employment based upon her religion in violation of New York City Administrative Law § 8-107(1)(a).

184. As a proximate result of Defendants’ intentional unlawful discrimination, Mrs. DeCarlo has suffered and continues to suffer a denial of equal terms, benefits and privileges of employment, mental anguish and emotional distress, monetary damage including lost wages, compensation and/or benefits that she would have received absent Defendants’ discrimination. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

SIXTH CAUSE OF ACTION:
VIOLATION OF NEW YORK CITY
ADMINISTRATIVE LAW TITLE 8 § 8-107(7)
AGAINST ALL DEFENDANTS

185. The allegations of the paragraphs above are reasserted here.

186. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein have created a hostile work environment based upon Mrs. DeCarlo’s religion, taken adverse employment actions based upon her religion, and altered the terms and conditions of Mrs. DeCarlo’s employment base upon her religion.

187. Mrs. DeCarlo opposed, protested and raised valid concerns about the discriminatory working environment.

188. Defendants were aware of Mrs. DeCarlo's concerns and complaints.

189. Mrs. DeCarlo has been subjected to retaliatory and adverse employment actions by the Defendants, including, but not limited to a substantial decrease in the assignment of Mrs. DeCarlo's to on-call cases.

190. The retaliatory and adverse employment actions to which Mrs. DeCarlo has been subjected to are directly related to her opposition, concerns and complaints about the hostile working environment created the religious discrimination of the Defendants.

191. The adverse employment actions to which Mrs. DeCarlo has been subjected to by the Defendants constitute unlawful retaliation against her in violation of New York Executive Law § 296(7).

192. As a proximate result of Defendants' intentional unlawful discrimination, Mrs. DeCarlo has suffered and continues to suffer a denial of equal terms, benefits and privileges of employment, mental anguish and emotional distress, monetary damage including lost wages, compensation and/or benefits that she would have received absent Defendant's discrimination. These injuries justify an award of compensatory damages in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

SEVENTH CAUSE OF ACTION:
VIOLATION OF CIVIL RIGHTS LAW § 79-I
AGAINST ALL DEFENDANTS

193. The allegations of the paragraphs above are reasserted here.

194. When Mrs. DeCarlo was hired in 2004, she filled out a written form from Defendant Mount Sinai, pursuant to Human Resources Policy—Exclusion from Patient Care—Employee Rights #15.3, whereby she explicitly objected to participation in the abortion of human beings.

195. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein's acts forced Mrs. DeCarlo to participate in the killing of a 22-week-old preborn child by dismemberment despite their knowledge of Mrs. DeCarlo's longstanding written and oral objection to participating in such abortions in violation of Civil Rights Law § 79-I, and discriminated against her on the basis of her refusals to assist.

196. As a proximate result of Defendants' intentional unlawful discrimination, Mrs. DeCarlo has suffered and continues to suffer a denial of equal terms, benefits and privileges of employment, mental anguish and emotional distress, monetary damage including lost wages, compensation and/or benefits that she would have received absent Defendant's discrimination. These injuries justify an award of damages in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

EIGHTH CAUSE OF ACTION:
INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST ALL DEFENDANTS

197. The allegations of the paragraphs above are reasserted here.

198. Mrs. DeCarlo in her employment as a Registered Nurse at the Mount Sinai Hospital, was in a subordinate position to her supervisors, Defendants Shapiro and Carpo, and was subject to the authority of Defendant Silverstein.

199. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein's acts forced Mrs. DeCarlo to participate in the killing of a 22-week-old preborn child by dismemberment despite their knowledge of Mrs. DeCarlo's longstanding religious objection to participating in such abortions.

200. Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein's acts were intentional, malicious, and in reckless disregard of Plaintiff's sensibilities, and were an abuse of their authority of Plaintiff.

201. As a proximate result of Defendants the Mount Sinai Hospital, Shapiro, Carpo and Silverstein's acts Mrs. DeCarlo suffered extreme emotional, psychological, and spiritual distress.

202. As a result of Defendants' intentional infliction of emotional distress, Mrs. DeCarlo has been damaged in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Mrs. DeCarlo respectfully seeks judgment against the Defendants as follows:

A. A declaratory judgment finding that Defendants have violated and continue to violate Article I, Section 11 of the New York State Constitution; Article 1, Section 3 of the New York State Constitution, New York Executive Law § 296(1)(a); New York City Executive Law § 296(7); New York City Administrative Code Title 8 Section 8-107(1), New York City Administrative Code Title 8 Section 8-107(7), Civil Rights Law § 79-I, and common law claim for intentional infliction of emotional distress, and Mrs. DeCarlo's rights thereunder, and injunctive relief ordering them to cease such violations;

B. Damages, in an amount to be determined at trial which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, for all harms that Mrs. DeCarlo has suffered and will suffer because of Mount Sinai's violation of her rights under Article I, Section 11 of the New York State Constitution; Article 1, Section 3 of the New York State Constitution, New York Executive Law § 296(1)(a); New York City Executive Law § 296(7);

New York City Administrative Code Title 8 Section 8-107(1), New York City Administrative Code Title 8 Section 8-107(7), Civil Rights Law § 79-I, and common law claim for intentional infliction of emotional distress, as well as punitive damages;

- C. An award of reasonable attorneys' fees disbursed and incurred in this action;
- D. Any other and further relief as this Court would deem necessary and proper.

Plaintiff requests a jury trial on all claims so triable.

DATED: April 12, 2010
New York, New York

Respectfully submitted,



Joseph A. Ruta
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1500 Broadway - 21st Fl.
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EXHIBIT A

HUMAN RESOURCES POLICY

EXCLUSION FROM PATIENT CARE - EMPLOYEE RIGHTS #15.3

Issued:
11/01/1970

Revised:
10/23/2002

Reviewed:
07/11/2008

Page:
1 of 1

A. All Medical Center employees have the right not to participate in any aspect of a patient's care or treatment that is perceived to conflict with the employee's cultural values, ethics or religious beliefs. The employee will not be penalized for declining to participate in such care or treatment. But, at no time shall the patient's rights, care or treatment be adversely affected.

B. Implementation:

1. The aspects of patient care or treatment which an employee may choose not to participate in due to such conflict as noted above include:

- ~~Abortion/Pregnancy Interruption~~
- Sterilization procedures
- Withholding or withdrawing of life-sustaining treatment, including nutrition and hydration.

2. If an employee wishes to exercise this right and be excused from providing such patient care, s/he must notify the supervisor immediately, ~~in writing as~~ to the specific aspect of care or treatment which conflicts with the employee's cultural values, ethics or religious beliefs and the reason for this conflict. The notification should be dated and signed by the employee. As part of this notification, an employee may request a transfer to another available position.

3. The employee is responsible for providing the appropriate patient care until an alternative has been implemented.

4. ~~The supervisor is responsible for making a decision in response to the employee's request~~ and taking the steps necessary to ensure quality patient care.

5. This notification should be maintained in the employee's departmental file.

Note: This policy replaces "Participation In An Induced Termination of Pregnancy Procedure" issued 11/1/70.

EXHIBIT B

Distribution:

OPERATING ROOM

No.

Non-Elective Surgical Scheduling

Page 1 of 1

Original Date of Issue: January 29, 2002

Reviewed:					
Revised:					

Patient Population:

Neonate	x
Pediatric	x
Adolescent	x
Adult	x
Geriatric	x

Kenneth J. Abrams, MD, MBA
Medical Director

Purpose: The goal of this policy is to delineate criteria and allocate resources for patients requiring non-elective surgery.

Definitions: For the purposes of resource allocation and prioritization the following stratification was developed:

- Category I: Patients requiring immediate surgical intervention for life or limb threatening conditions.
- Category II: Patients requiring surgery within 6 hours of identification and notification.
- Category III: Patients requiring surgery within 24 hours of identification.
- Category IV: Patient's desiring accommodation as add-ons to the schedule as opportunities permit.

A list of examples for surgical procedures which would fit the above defined classifications is attached in appendix I. An emergency case form ("pink slip") has been developed for data collection and stratification (appendix 2).

A. Procedure Requirement:

1. All cases must be prepared to go to the Operating Room prior to booking "Pink Slips".
2. Surgeons must be immediately available for all Category I and Category II patients.
3. All required information must be provided at the time of booking the pink slip.
4. The attending surgeon or chief resident (if they possess independent privileges) will be the responsible party for ensuring booking accuracy and availability.
5. If a surgeon is not available at the time offered for Category I and Category II patients appropriate back-up coverage must be available. If unavailable, the case will be re-classified to the next lower level. Policy violations will be referred to the appropriate departmental and institutional committee for corrective action.

B. Communications:

1. All cases should be phoned into the OR Central Communications Center at 212-241-1990.
2. All information will be reviewed by the Nursing Director for Surgical Admissions and Anesthesiology Clinical Director or their designee's for ensuring appropriate classifications and scheduling.

C. Procedure:

1. All Category I patients will gain immediate access to the next available appropriate OR
2. Category II patients will gain access to the operating room according to the following:
 - a. Bumping elective cases of the same surgeon.
 - b. Bumping elective cases of the same service.
 - c. Bumping elective cases of another service as required and determined by the Anesthesia Clinical Coordinator and the Nursing Director for Surgical Admissions or their call designees.
3. Category III patients will be accommodated as the schedule permits.
4. Category IV patients will be accommodated as the schedule permits or if unable to accommodate before 8pm will be placed on the next available elective schedule.
5. If time has been offered and the team is not fully present at the agreed upon time, the pink slip case will move to a lower priority and time will be given to the next case.

D. Monitoring:

1. All Category I and Category II pink slips will be reviewed monthly by the Perioperative Services Care Center QM/PI committee for appropriateness and timeliness.
2. Data will be reviewed for identification of policy violations. Policy violations will be referred to the appropriate departmental and institutional committee for corrective action.

E. Conflict Resolution:

1. Should conflicts arise, they will be resolved by the following ascending order:
 - a. Cluster Nurse Manager, Cluster Anesthesiology Coordinator, and Attending surgeon.
 - b. Anesthesiology Clinical Director, Nursing Director of Surgical Admissions, and Attending Surgeons.
 - c. Medical Director for Perioperative Services in conjunction with the above.

Index No.:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CATHERINA LORENA CENZON-DECARLO,

Plaintiff,

-against-

THE MOUNT SINAI HOSPITAL, a New York
Not-for-Profit Corporation, ELEONORA SHAPIRO,
MICHAEL SILVERSTEIN, M.D., and MAURA
FRAN CARPO,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

RUTA & SOULIOS LLP
Attorneys For Plaintiff
1500 Broadway – 21st Floor
New York, New York 10036
(212) 997-4500

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. §130-1.1a

JOSEPH A. RUTA, ESQ. hereby certifies that, pursuant to 22 N.Y.C.R.R. §130-1.1a, the foregoing Summons and Verified Complaint of the Plaintiff is not frivolous nor frivolously presented.



JOSEPH A. RUTA

Dated: New York, New York
April 12, 2010