

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HILDA MAYER,

Plaintiff,

v.

NEUROLOGICAL SURGERY, P.C. and
DR. MICHAEL BRISMAN,

Defendants.

Civil Action No. U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

COMPLAINT

CV 15

0864

Jury Trial Demanded

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Plaintiff Hilda Mayer, for her Complaint against Defendants Neurological Surgery, P.C.

("NSPC" or the "Company") and Dr. Michael Brisman, hereby states and alleges as follows:

PRELIMINARY STATEMENT

GO, M.J.

1. NSPC holds itself out as New York's elite surgical center with a staff of "prestigious" and "award-winning" surgeons providing "world class" care to its patients who suffer from cancer, brain and spine conditions and other debilitating illnesses. What the public, NSPC's patients and NSPC's affiliated hospitals – including Long Island Jewish Medical Center, North Shore University Medical Center and St. Francis Hospital – do not know, however, is that NSPC tells its Marketing Representatives (who have no medical training whatsoever) that when patients choose not to have surgeries, it is their responsibility to "change their minds" and to "sell surgeries . . . just like a car salesman's job is to sell cars."

2. When Ms. Mayer – an NSPC Marketing Representative for seven years – told Dr. Brisman that she could not control whether a patient actually decides to have surgery, he shot back, "That's what I pay you for, to change their minds." After Ms. Mayer complained about this unethical medical practice, as well as the horrendous harassment she was subjected to after being diagnosed with cancer, she was fired.

3. Not only does NSPC equate potential “patients” to nothing more than insurance carrying “customers” who can pay large sums for serious and invasive surgery, but the Company also denigrates and ridicules its employees who are diagnosed with medical conditions, attempts to control the level of medical care its employees seek, and ignores all requests for privacy, discretion and compassion. When Ms. Mayer was diagnosed with cancer and soon after she disclosed her condition to NSPC, little did she know that not only would she be in a battle to save her life, but also to preserve her dignity and respect in the workplace.

4. Physicians all swear to some version of the Hippocratic Oath. Within that oath is an affirmation that physicians will respect privacy and keep it “sacred.” In fact, the relationship between physicians and patients is so sacred that the law codifies it, through the recognition of physician-patient privilege. While Ms. Mayer is an employee of NSPC and not a patient, the ethical standards for physicians throughout the course of their practice, patient-facing or administrative, should remain the same.

5. When Ms. Mayer was diagnosed with cancer and disclosed her diagnosis to Dr. Brisman – her direct supervisor and the Chief Executive Officer (“CEO”) of NSPC – she told him she wanted her cancer diagnosis to remain confidential. However, word spread like wildfire of Ms. Mayer’s condition, Dr. Brisman openly mocked Ms. Mayer for her disease and Dr. Brisman blamed her throughout the office for causing the Company’s insurance premiums to increase. At a time when Ms. Mayer continued to be an asset to NSPC and needed the support of her employer most, she was treated like a liability – someone whose healthcare needs were a cost against the Company’s bottom line. Instead of treating her as a human being, she was seen as a negative financial transaction – much like the referrals she was unable to convince to have surgery.

6. For instance, but only by way of example, during a regularly scheduled marketing meeting, Dr. Brisman humiliated Ms. Mayer when he blamed her cancer treatment decisions for increasing insurance premium costs for the Company. Dr. Brisman pointedly asked Ms. Mayer, in front of many colleagues, if the chemotherapy drugs she was taking were “brand name” or generic. Dr. Brisman then demanded that going forward she request generic options.

7. Moreover, but also only by way of example, in or around May 2014, Ms. Mayer’s hair began falling out as a result of her chemotherapy treatments. Dr. Brisman demanded that Ms. Mayer wear a wig to work because he said her thinning hair “**makes other people uncomfortable.**” Ms. Mayer is not aware of any employee who made any such comment or complaint. More likely, the only person uncomfortable was Dr. Brisman himself. Thereafter, Ms. Mayer was shamed into wearing a wig because apparently Ms. Mayer’s appearance was too grotesque for Dr. Brisman to handle.

8. Similarly, on some occasions, Ms. Mayer was also medically required to wear a chemotherapy pump to work. Dr. Brisman demanded that Ms. Mayer keep it covered and not visible so as not to make other employees “uncomfortable.” Even if it mattered – which it does not – Ms. Mayer is completely unaware of any such complaints by any employees.

9. In July 2014, while Ms. Mayer was out of the office for surgery, Dr. Brisman discussed Ms. Mayer’s disability behind her back. Ms. Mayer was targeted in a marketing meeting as a prime cause of NSPC’s increased healthcare costs. Dr. Brisman ranted that excessive employee healthcare usage was causing the increase. An employee asked, “Like Hilda, because she has cancer?” Dr. Mihai Dimancescu responded: “Exactly.” Dr. Brisman agreed, and then listed off a number of items that “employees should be doing” to lower healthcare costs for the Company, including limiting trips to the emergency room, seeking

generic drugs rather than brand name, and choosing outpatient care rather than inpatient, among others. These irresponsible medical directives were given by Dr. Brisman despite his complete lack of knowledge of any potential health condition for which an employee might need treatment and therefore without any understanding of what the best course of treatment might be.

10. In August 2014, Dr. Brisman drafted an inter-office memorandum wherein he doubled-down on his right to dictate medical treatment to his employees. Dr. Brisman outright targeted employees who were receiving medical treatment that was inconsistent with maximizing NSPC profits and admonished employees to select medical options that would result in lower costs to NSPC. Dr. Brisman apparently sought sympathy because “we are spending more on healthcare . . . [i]f we spend more, oxford will just ask us for higher premiums.” Dr. Brisman told employees to use generic drugs, not to use emergency rooms, and not to use inpatient facilities. Dr. Brisman also told employees that they needed to lose weight and get into a “normal range.” Not to be misunderstood, this was hardly a “pep talk” about healthy living. This was Dr. Brisman’s direction to employees about the “proper way” to utilize health insurance in order to minimize the cost of insurance premiums for NSPC.

11. Despite the debilitating effects of receiving three rounds of chemotherapy, and the extensive time required for such treatment, Ms. Mayer was able to maintain a full-time work schedule and continued to perform her job at a very high level. However, on occasion, she would require reasonable accommodations to attend doctor’s appointments. Ms. Mayer’s requests for time off were met with hostility. By way of example, in October 2014, Dr. Brisman quizzed Ms. Mayer on her need to take time off and asked her,

How many more procedures will it take? When is enough enough? Don’t we know what’s wrong with you? You know who pays for it?

Dr. Brisman then pointed to his pocket, as he exclaimed: **“I do!”**

12. Ms. Mayer complained to Dr. Brisman about the discrimination that was so rampant at NSPC, stating:

I feel singled out, because I have Cancer. My biggest regret is saying anything at all about being sick. I have a right to my privacy, I feel very validated and discriminated, since I informed you and Linda. I did nothing wrong . . . I think that you and NSPC, have targeted me because I have cancer and I will be a big cost . . . I am the big disappointment, I have CANCER

However, Ms. Mayer’s complaints fell on deaf ears and no investigation or remedial measure was ever taken.

13. Moreover, after Ms. Mayer retained counsel and further complained about the unlawful conduct pervading NSPC – including the unethical surgical and marketing practices as well as the discrimination she had been subjected to – Dr. Brisman cornered Ms. Mayer and yelled at her for raising her complaints, calling her a **“yenta.”** He blamed her complaints on her cancer medication, stating: **“I think it’s your medication or you’re taking new meds.”** Dr. Brisman claimed that because of her complaints, Ms. Mayer was incapable of doing her job as a Marketing Representative, given that she does not **“like any of us.”** Dr. Brisman asked Ms. Mayer if she still intended to work at NSPC (even though Ms. Mayer had never said she intended to leave). When Ms. Mayer said she had no intention to leave, Dr. Brisman responded: **“Why do you even want to work here if you think no one likes you?”** It was during this discussion that Dr. Brisman responded to Ms. Mayer’s complaints about **“selling”** surgeries, when he

responded: “I don’t force you to sell surgeries, but that’s the job. Just like a car salesman’s job is to sell cars.”¹

14. Only a few weeks later, on January 20, 2015, after seven years of employment, Ms. Mayer was fired. This was blatant discrimination and retaliation.

15. Ms. Mayer, by filing this lawsuit, seeks redress for the unlawful conduct committed against her, as well as to end Defendants’ unlawful employment practices once and for all. Ms. Mayer seeks declaratory, injunctive, and equitable relief, as well as monetary damages, to redress Dr. Brisman’s and the Company’s unlawful employment practices in violation of the Family and Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2601 *et seq.*, the New York Labor Law (“NYLL”), N.Y. Labor Law §§ 215 *et seq.*, the New York State Human Rights Law (“NYSHRL”), N.Y. Executive Law §§ 290 *et seq.*, and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §§ 8-101, *et seq.*

JURISDICTION, VENUE AND ADMINISTRATIVE PREREQUISITES

16. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 as this action involves federal questions regarding the deprivation of Plaintiff’s rights under

¹ Moreover, Defendants’ treatment of patients as “customers” is further bolstered by Defendants’ practice of assuring potential patients that NSPC will accept their insurance, and then refusing to accept insurance and/or billing patients in an amount that exceeds their coverage, and expecting the patient to pay for the remainder bill balance out-of-pocket. In fact, these practices – among others – were the subject of Aetna Health, Inc. et al. v. Neurological Surgery, P.C., et al, No. 652819/2011 (N.Y. Cty. Sup. Ct., filed October 14, 2011), wherein it was alleged that Defendants violated agreements with Aetna, used out-of-network physicians in connection with medical treatment without proper disclosure to patients, sought excessive fees for procedures, submitted false and misleading claims to Aetna regarding the charges for services rendered, and attempted to collect millions of dollars in fees directly from patients when Aetna rightfully refused to cover the excessive and violative charges. In addition, NSPC is currently suing multiple former patients for hundreds of thousands of dollars stemming from surgical procedures.

the FMLA. The Court has supplemental jurisdiction over Plaintiff's related claims arising under state law pursuant to 28 U.S.C. § 1367(a).

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district.

18. Pursuant to NYLL § 215(2)(b), contemporaneously with the commencement of this action, Plaintiff will serve a copy of this Complaint upon the Office of the Attorney General, providing notice of the claims set forth in this action.

19. Following the commencement of this action, a copy of this Complaint will be served both on the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of the NYCHRL.

20. Ms. Mayer will be filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging violations of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.* against Defendants. As soon as the EEOC issues Ms. Mayer a Notice of Right to Sue, Ms. Mayer will seek leave to amend this Complaint to add ADA claims against Defendants.

21. Any and all other administrative prerequisites have been met.

PARTIES

22. Plaintiff Hilda Mayer is a former employee of NSPC who currently resides in Roslyn, New York. Ms. Mayer worked in Long Island, Queens and Brooklyn while working for NSPC. At all relevant times, Ms. Mayer fell within the definition of a "person" and/or an "employee" under all applicable statutes.

23. Defendant NSPC is a private neurosurgery group, with a practice focusing on brain and spine surgery. NSPC is a domestic professional corporation organized under the laws of the State of New York with ten offices located throughout Long Island and the tri-state area, and maintains its principal office at 100 Merrick Road, Suite 128W, Rockville Centre, New York 11570. At all relevant times, NSPC was an “employer” within the meaning of all applicable statutes.

24. At all relevant times, Defendant Michael Brisman was the CEO of NSPC and Ms. Mayer’s direct supervisor. In this capacity, Dr. Brisman participated directly in the unlawful conduct described herein. Upon information and belief, Dr. Brisman resides in Nassau County, New York. At all relevant times, Dr. Brisman was an “employer” within the meaning of all applicable statutes.

FACTUAL ALLEGATIONS

Ms. Mayer’s Employment and Performance with NSPC

25. In August 2007, Ms. Mayer began her employment with NSPC as a Marketing Representative.

26. In this role, Ms. Mayer was responsible for planning and setting up “meet and greets,” continuing medical education courses, “grand rounds,” medical conferences and dinners for the purpose of introducing NSPC physicians to potential referring physicians. In addition, she organized patient events, wrote newsletters for distribution and created mailers as advertising.

27. Ms. Mayer worked in Long Island, Queens and Brooklyn.

28. Ms. Mayer performed very well in this role for seven years and – until being diagnosed with cancer – was always highly regarded as a valuable employee. Indeed, Ms. Mayer was routinely praised for her superior work.

29. Simply put, before being diagnosed with cancer, Ms. Mayer's performance record was always unimpeachable.

Ms. Mayer's Cancer Diagnosis and Disclosure

30. In or around December 2013, Ms. Mayer was diagnosed with cancer.

31. Although Ms. Mayer wanted to keep the matter private, she relayed her diagnosis to Dr. Brisman, her direct supervisor, and Linda Sofio, NSPC's office manager, so that they both would understand when she needed support and accommodations for her upcoming treatment.

32. Nonetheless, while Ms. Mayer asked for everything to remain confidential, Dr. Brisman disregarded her wishes entirely and told her that she needed to tell his wife, Maddy Brisman, who Ms. Mayer knew outside of the workplace.

33. Thereafter, Ms. Brisman contacted Ms. Mayer to discuss her health, including personal and invasive questions about her blood levels and type of treatment she was receiving.

34. Moreover, in the following weeks and months, word spread around the office like wildfire that Ms. Mayer had cancer, through no doing of Ms. Mayer.

35. As a result, Ms. Mayer became very uncomfortable in the workplace and the scrutiny by her colleagues and supervisors began intruding into her work. This was precisely why Ms. Mayer wanted to keep her diagnosis private.

36. Ms. Mayer's cancer and treatment even pervaded the community outside of work.

37. For instance, but only by way of example, in February 2014, Ms. Mayer was attending her daughter's class at Temple Beth Sholom, and a mutual friend of hers and the

Brisman screamed in a loud voice across a crowd, "My God I'm sorry you have cancer, Maddy told me!" Dr. Brisman and/or his wife were doubtlessly responsible for gossiping about Ms. Mayer's cancer with this woman.

38. Ms. Mayer's concern for the disclosure of her cancer emanated not only from the private and personal nature of the information, but also because she had personally witnessed other employees suffering from medical conditions become fodder for abuse at NSPC.

39. For instance, in or around December 2013, during a marketing meeting, Dr. Brisman went on a tirade about the increasing cost of insurance premiums the Company was paying for healthcare. Dr. Brisman ranted about how too many employees were using their health insurance in a manner he felt was irresponsible and excessive.

40. During the meeting, Dr. Brisman said that people should be using generic drugs and should not be receiving inpatient treatment unless it was an emergency.

41. During the meeting, Dr. Brisman asked Ms. Sofio to determine which employees were using the most medical benefits. To further his point about employees "driving up costs," Dr. Brisman asked aloud: "Isn't there someone here who recently had premature twins?"

42. In fact, Dr. Brisman was correct. Earlier in 2013, an employee had premature twin babies who required hospitalization as infants.

43. During the meeting, Dr. Brisman asked Ms. Sofio about the cost of the employee's treatment. Ms. Sofio responded that it would be illegal for insurance companies to disclose such information, as it would violate privacy laws.

44. Ms. Mayer, and many others present, were mortified that Dr. Brisman would speak so callously about an employee who had a medical hardship regarding her newborn children.

45. It was due to conduct like this, among other reasons, that Ms. Mayer had initially implored Ms. Sofio and Dr. Brisman to keep her medical issues private.

Unlawful Discrimination Against Ms. Mayer

46. During 2014, the entire office learned that Ms. Mayer had cancer due to Dr. Brisman's refusal to keep the information private.

47. For instance, during a regularly scheduled marketing meeting and in the presence of other marketing staff, Dr. Brisman humiliated Ms. Mayer because of her cancer and related treatment, much the way he had previously done with the employee who had given birth to premature twins.

48. During that meeting, Dr. Brisman again raised the issue of rising health insurance premiums. Dr. Brisman then turned towards Ms. Mayer – who everyone knew had cancer – and pointedly asked her if the chemotherapy drugs she was taking were brand name or generic. Dr. Brisman then demanded that going forward she request generic options as – according to him – they are “much cheaper and work just as good as brand name.”

49. Ms. Mayer responded that she was not sure if generic drugs were even a possibility, but he continued to press her, ordering her to speak with her physician about her treatment. Complying with Dr. Brisman's invasive directive, Ms. Mayer inquired about the possibility of generic drugs with her physician, who stated that in fact, generic drugs were not a possibility.

50. In or around May 2014, Ms. Mayer's hair began falling out as a result of her chemotherapy treatments. At a time when she needed her employer most, Dr. Brisman's response was despicable. Dr. Brisman demanded that Ms. Mayer wear a wig to work because he said her thinning hair “makes other people uncomfortable.” Ms. Mayer is not aware of any

employee who made any such comment or complaint beyond Dr. Brisman himself. Thereafter, Ms. Mayer was shamed into wearing a wig because apparently Ms. Mayer's appearance was too grotesque for Dr. Brisman to handle.

51. On some occasions, Ms. Mayer was also required to wear a chemotherapy pump to work. This too was an accommodation of which Dr. Brisman disapproved. Dr. Brisman told Ms. Mayer, in the presence of other employees, that when she wore her chemotherapy pump she was required to keep it covered and not visible so as not to make other employees "uncomfortable." Ms. Mayer is completely unaware of any such complaints by any employees.

52. In or around July 2014, while Ms. Mayer was out of the office for additional invasive surgery, Dr. Brisman continued to discuss Ms. Mayer's disability behind her back. Ms. Mayer was targeted in a marketing meeting as a prime cause of rising costs of medical benefits at NSPC. Dr. Brisman again ranted about how, because of excessive employee healthcare usage, the Company's employer costs for healthcare were out of control. In response another employee asked, "Like Hilda, because she has cancer?" Dr. Mihai Dimancescu replied: "Exactly." Dr. Brisman agreed, and then listed off a number of items that "employees should be doing" to lower healthcare costs for the Company, including limiting trips to the emergency room, seeking generic drugs rather than brand name, and choosing outpatient care rather than inpatient care.

53. In or around August 2014, Dr. Dimancescu sent out an inter-office memorandum from Dr. Brisman that outright targeted employees who were receiving medical treatment that was inconsistent with maximizing NSPC profits. Dr. Brisman admonished employees to select medical options that would result in lower costs to NSPC. Perhaps seeking sympathy, Dr. Brisman explained that he would have to bear the burden of increased health insurance expenses:

This year our Oxford premium will be \$2.5 million. It has been going up the last few years partly because we have more

employees, but also because we are spending more on healthcare . . . [a] point that many people do not seem to understand is how medium and large companies pay for their health insurance. Our expenses are ultimately absorbed by us, not Oxford. If we spend more, Oxford will just ask us for higher premiums.

54. Dr. Brisman then offered some “suggestions” to NSPC employees which included the following:

Use generics instead of brand medicines. Usually the generic medicine is nearly identical to the brand drug, and is MUCH less expensive.

Use Urgent Care Centers instead of Emergency rooms. Again, for most time sensitive health issues, the urgent care centers (which are all over now) provide faster, better care than emergency rooms, at a fraction of the price. Obviously for serious, life threatening issues like a stroke or heart attack, the hospital Emergency room should still be used.

Use outpatient rather than inpatient workups. Many issues can be assessed and resolved as an outpatient. This is a much better and less expensive way to evaluate a problem, unless it is urgently life threatening.

Stop smoking. Smoking is one of the two biggest causes of preventable death in this country (the other is obesity). Smoking causes sickness of every body part. Smoking is responsible for 95% of lung cancers, and is the number one cause of malignant brain tumors (metastatic from lung cancer). It adds 10-15 years to your appearance. I am aware that quitting is very difficult, but there are more helpful smoking cessation aides now than ever before. Quitting smoking, AT ANY POINT, will immediately improve your health dramatically. I am amazed that so many people in our medical group still smoke, and even do so during work hours. Please stop if you can.

Lose weight. Besides smoking this is the other major cause of illness and preventable death in this country. About 30% of Americans are obese. Obesity contributes SIGNIFICANTLY to high blood pressure, diabetes, heart disease, stroke, and many other illnesses. There are numerous diet assistance programs available now. The key to maintaining proper weight is keeping active and controlling diet. I know this can be very difficult, but it is

achievable, and again, you will feel better IMMEDIATELY, if you can get your weight into a normal range.

55. As Ms. Mayer had been receiving treatment for cancer, it was clear to her and many others that she was one of the intended targets of this message.

56. Ms. Mayer continually complained about the way she was being treated, but she remained targeted all around the workplace.

57. Despite the debilitating effects of receiving three rounds of chemotherapy and the extensive time required for such treatment, Ms. Mayer was able to maintain a full-time work schedule and continued to perform her job at a very high level.

58. However, on occasion, she would require reasonable accommodations to attend doctor's appointments. Ms. Mayer's requests for time off were met with hostility.

59. In or around October, 2014, Dr. Brisman quizzed Ms. Mayer on her need to take time off and asked her, **"How many more procedures will it take? When is enough enough? Don't we know what's wrong with you? You know who pays for it?"** Dr. Brisman then pointed to his pocket, as he exclaimed: **"I do!"**

Unlawful Retaliation Against Ms. Mayer

60. Ms. Mayer has complained about the discriminatory and retaliatory conduct described at length herein. However, her complaints have fallen on completely deaf ears.

61. Due to both the desire to rid the workplace of a sick employee and to remove a source of complaints, the Company has responded by harshly and unfairly criticizing Ms. Mayer's performance.

62. For instance, but only by way of example, Dr. Brisman claimed that Ms. Mayer had not provided a sufficient number of referrals recently. In response, Ms. Mayer explained to Dr. Brisman that if a referral elects not to have surgery, that is out of her control. However, in a

moment that can be described as nothing other than sheer greed, Dr. Brisman responded, **“That’s what I pay you for, to change their minds.”**

63. Apparently, according to NSPC and Dr. Brisman, it is a part of a Marketing Representative’s job duties to “change the mind” of a patient with respect to a surgery decision. It is highly inappropriate and unethical that Dr. Brisman would expect a non-medical professional to be responsible for “selling” surgery to prospective patients.

64. Nonetheless, this is the treatment Ms. Mayer has been subjected to following her complaints of discrimination. In contrast, other marketing employees with less tenure – but who are fully healthy – were treated far better.

65. In email correspondence with Dr. Brisman, Ms. Mayer explained precisely how she was being discriminated against because of her disability, stating:

I feel singled out, because I have Cancer. My biggest regret is saying anything at all about being sick. I have a right to my privacy, I feel very validated and discriminated, since I informed you and Linda. I did nothing wrong.

I think that you and NSPC, have targeted me because I have cancer and I will be a big cost.

I am the big disappointment, I have CANCER

66. On December 17, 2014, Ms. Mayer again raised claims of discrimination, this time through a letter from her counsel. Moreover, Ms. Mayer raised claims that NSPC and Dr. Brisman had asked her to engage in unethical conduct by telling her that it was her job to persuade individuals to have surgical procedures.

67. On December 19, 2014, at approximately 12:30 p.m., Ms. Mayer was retaliated against when she was called into a meeting with Dr. Brisman and Ms. Sofio. Although Ms. Mayer was not previously scheduled to be at the office that day, she attended the meeting as

requested. However, this meeting had absolutely no business purpose and was for the sole purpose of harassing and retaliating against Ms. Mayer for making her protected complaint.

68. The sole topic of this meeting was the allegations raised by Ms. Mayer in the December 17, 2014 letter. Despite the agreement between NSPC's counsel and Ms. Mayer's counsel that all communication with Ms. Mayer about her complaint would go through counsel, Dr. Brisman went through the December 17, 2014 letter point-by-point and attempted to engage Ms. Mayer on all of the allegations of discrimination and retaliation.

69. During this meeting, Dr. Brisman accused Ms. Mayer of being a “yenta,” Yiddish slang for a woman who is a gossip or busybody. This crass allegation is not only untrue, but also has the effect of minimizing the seriousness of the issues Ms. Mayer raised.

70. Dr. Brisman sarcastically wondered aloud how Ms. Mayer could continue to work at NSPC if she really thought the environment was so terrible and asserted that Ms. Mayer does not “like any of us.” Dr. Brisman asserted that Ms. Mayer was incapable of doing her job, given the allegations. Dr. Brisman mused about whether Ms. Mayer was even intending to be at work on Monday. Ms. Mayer had never raised the possibility of not working, and quickly assured Dr. Brisman that she would be at work on Monday. Dr. Brisman stated: “**Why do you even want to work here if you think no one likes you?**” The implication was clear that Dr. Brisman no longer wanted her at NSPC.

71. Dr. Brisman also raised Ms. Mayer's claims that Dr. Brisman said she was responsible for changing patients' minds over whether to have surgery. Dr. Brisman arrogantly and adamantly stated that there was nothing wrong with that approach to surgeries and marketing. It was then that Dr. Brisman made the analogy: “**I don't force you to sell surgeries, but that's the job. Just like a car salesman's job is to sell cars.**”

72. During the meeting, Dr. Brisman blamed Ms. Mayer's illness and medical treatment for the reason she feels discriminated and retaliated against, stating: "**I think it's your medication or you're taking new meds.**"

73. Ms. Mayer cried during the meeting.

74. Less than a month later, in retaliation for her complaints and her persistent objections to the continuing discrimination, retaliation and unethical conduct permeating NSPC, Ms. Mayer was fired.

FIRST CAUSE OF ACTION
(Whistleblower Retaliation in Violation of New York Labor Law § 215)
Against All Defendants

75. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

76. NYLL § 215 provides that it is unlawful to discriminate or retaliate against an employee because such employee has made a complaint that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of the NYLL.

77. Defendants terminated Plaintiff's employment and subjected Plaintiff to the adverse employment actions described herein in retaliation for Plaintiff's complaints of Defendants' conduct that Plaintiff reasonably and in good faith believed to constitute violations of Chapter 31 of the NYLL.

78. The sections of Chapter 31 of the NYLL which are implicated by Plaintiff's complaint include, *inter alia*, NYLL §§ 741 and 200.

79. Defendants violated NYLL § 741 when they retaliated against Plaintiff, up to and including her termination, because she objected to and/or disclosed and/or threatened to disclose

a policy or practice of Defendants that she reasonably believed constituted improper quality of patient care; namely, that Marketing Representatives should “change the minds” of patients as to whether to have invasive surgery, and that Marketing Representatives should “sell” surgeries like they are “car salesmen.”

80. Defendants violated NYLL § 200 when they retaliated against Plaintiff, up to and including her termination, because she objected to and/or opposed Defendants’ practice of discouraging employees from utilizing their health insurance coverage, discouraging employees from following the advice of their physicians and/or providing medical advice to employees without knowledge of their medical conditions or circumstances.

81. As a direct and proximate result of Defendants’ unlawful conduct in violation of the NYLL, Plaintiff has suffered, and continues to suffer, harm for which she is entitled to an award of monetary, compensatory and punitive damages, and any and all other remedies available under law, in addition to recovery of all attorneys’ fees and costs.

SECOND CAUSE OF ACTION
(Retaliation in Violation of the Family Medical Leave Act)
Against Defendant NSPC

82. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

83. At all times relevant herein, Plaintiff was an “eligible employee” within the meaning of the FMLA. At all times relevant herein, NSPC was and is a “covered employer” within the meaning of the FMLA.

84. NSPC has violated the FMLA by unlawfully retaliating against Plaintiff for exercising rights protected by the FMLA by, *inter alia*, subjecting her to a hostile work environment that would reasonably dissuade a reasonable person from exercising rights

protected by the FMLA, preventing her from exercising her rights under the FLMA in the future and ultimately terminating her.

85. As a direct and proximate result of NSPC's unlawful conduct in violation of the FMLA, Plaintiff has suffered, and continues to suffer, harm for which she is entitled to an award of monetary damages, including, but not limited to, wages, salary, employment benefits and/or other compensation denied or lost to Plaintiff by reason of NSPC's unlawful conduct, plus interest, and other equitable relief.

86. Plaintiff is entitled to an award of liquidated damages, as NSPC violated the FMLA, such conduct was not in good faith and there was not a reasonable basis for believing that such conduct was not a violation of the FMLA.

THIRD CAUSE OF ACTION
(Discrimination in Violation of New York State Human Rights Law)
Against All Defendants

87. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

88. Defendants have discriminated against Plaintiff in violation of the NYSHRL by denying her equal terms and conditions of employment, including, but not limited to, subjecting her to a hostile work environment because of her disability and because Defendants regarded her as disabled.

89. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits, for which she is entitled to an award of monetary damages.

90. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence and emotional pain and suffering, for which she is entitled to an award of compensatory damages.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of New York State Human Rights Law)
Against All Defendants

91. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

92. Defendants retaliated against Plaintiff for her engagement in protected activities, including, but not limited to, requesting accommodations for her disability and for opposing Defendants' discrimination against her.

93. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, including, but not limited to, loss of past and future income, compensation and benefits for which Plaintiff is entitled to an award of damages.

94. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which Plaintiff is entitled to an award of damages.

FIFTH CAUSE OF ACTION
(Aiding and Abetting Violations of NYSHRL)
Against Defendant Brisman

95. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

96. Defendant Brisman knowingly or recklessly aided and abetted the unlawful employment practices, discrimination, harassment and retaliation against Plaintiff stated herein in violation of the NYSHRL.

97. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of future income, compensation and benefits for which she is entitled to an award of monetary damages.

98. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which she is entitled to an award of monetary damages.

SIXTH CAUSE OF ACTION
(Discrimination in Violation of New York City Human Rights Law)
Against All Defendants

99. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

100. Defendants discriminated against Plaintiff on the basis of her disability in violation of the NYCHRL by subjecting her to a hostile work environment because of her disability and because Defendants regarded her as disabled, ultimately terminating her.

101. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer monetary and/or economic harm, for which she is entitled to an award of monetary damages and other relief.

102. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

103. Defendants' unlawful and discriminatory actions constitute malicious, willful, wanton and/or reckless indifference to Plaintiff's protected rights under the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

SEVENTH CAUSE OF ACTION
(Retaliation in Violation of the NYCHRL)
Against All Defendants

104. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

105. Defendants retaliated against Plaintiff for her engagement in protected activities, including, but not limited to, requesting an accommodation for her disability and for opposing Defendants' discrimination against her on account of her disability.

106. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, including, but not limited to, loss of past and future income, compensation and benefits for which Plaintiff is entitled to an award of damages.

107. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress

and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which Plaintiff is entitled to an award of damages.

EIGHTH CAUSE OF ACTION
(Aiding and Abetting Violations of NYCHRL)
Against Defendant Brisman

108. Plaintiff hereby repeats and re-alleges each and every allegation in the above paragraphs, inclusive, as if fully set forth herein.

109. Defendant Brisman has knowingly or recklessly aided and abetted the discrimination against Plaintiff on the basis of her disability, including, but not limited to, subjecting her to a hostile work environment because of her disability and because Defendants regarded her as disabled and ultimately terminating her.

110. As a direct and proximate result of Defendant Brisman's unlawful conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of monetary damages and other relief.

111. As a direct and proximate result of Defendant Brisman's unlawful conduct in violation of the NYCHRL, Plaintiff has suffered and continues to suffer mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

112. Defendant Brisman's unlawful and discriminatory actions constitute malicious, willful, wanton and/or reckless indifference to Plaintiff's protected rights under the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States and the state of New York;
- B. An award of damages, including liquidated damages, compensatory damages,

and/or punitive damages, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages incurred as a result of Defendants' unlawful actions;

C. An award of damages to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to her professional and personal reputation and loss of career fulfillment;

D. An award of damages to be determined at trial, to compensate Plaintiff for physical injuries, emotional distress and/or mental anguish incurred as a result of Defendants' unlawful actions;

E. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law;

F. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct; and

G. Such other and further relief as the Court may deem just and proper.


JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: February 18, 2015
New York, New York

Respectfully submitted,

WIGDOR LLP

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