UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANNE GRAND'MAISON, M.D.,	:	
Plaintiff,	:	Civil Action No.
v.	:	
	:	**COMPLAINT**
ROSWELL PARK COMPREHENSIVE CANCER CENTER; HEALTH RESEARCH INC. ROSWELL PARK DIVISION; CANDACE JOHNSON, Ph.D., in her individual and professional capacities; RENIER BRENTJENS, M.D., Ph.D., in his individual and professional capacities; CARL MORRISON, M.D., DVM, in his individual and professional capacities; JOHN KANE III, M.D., in his individual and professional capacities; and ERROL DOUGLAS, Ph.D., in his individual and professional capacities,	:	**Jury Trial Demanded**
Defendants.	:	

Plaintiff Anne Grand'Maison, M.D. brings this Complaint against Defendants Roswell Park Comprehensive Cancer Center, Health Research Inc. Roswell Park Division ("HRI") (collectively "Roswell"), Candace Johnson, Ph.D., Renier Brentjens, M.D., Ph.D., Carl Morrison, M.D., DVM, John Kane III, M.D. and Errol Douglas, Ph.D., and hereby alleges as follows:

PRELIMINARY STATEMENT

1. Defendant Roswell Park Comprehensive Cancer Center has put numerous patients in serious danger, let alone failed to adhere to basic patient safety standards and completely violated the Hippocratic Oath to its patients—and then fired the doctor, Plaintiff Anne Grand'Maison, M.D., who blew the whistle on this egregious conduct. And this has all been done directly by and with the knowledge of Roswell's most senior members, including Chief

Executive Officer, Candace Johnson, Ph.D. Roswell cannot be permitted to sweep this unlawful conduct under the rug and must be held fully accountable not only to Dr. Grand'Maison, but to the people of Buffalo, the residents of the State of New York and all the patients who entrust Roswell with providing them with medical care in times of need.

2. Dr. Anne Grand'Maison was the first medical oncologist specifically trained in sarcoma to join Roswell since its founding more than 130 years ago. She was drawn to the position by the prospect of growing Roswell's sarcoma clinic using the cutting-edge treatment approach she learned during her fellowship at MD Anderson Cancer Center ("MD Anderson")—widely considered the top cancer center in the country—and engaging in groundbreaking research into this rare, complex and understudied disease.

3. But Dr. Grand'Maison was appalled by what she observed at Roswell—sarcoma pathology reports were replete with diagnostic errors, doctors were woefully uneducated in the latest sarcoma research, senior doctors exhibited a steadfast refusal to seek out second opinions in difficult cases and the sarcoma clinic was chronically understaffed, among many other issues. All these issues put patient safety in jeopardy and lives at risk. She also encountered a work environment which was hostile to female physicians in innumerable ways.

4. Dr. Grand'Maison made numerous and near endless efforts to raise her concerns about patient safety and gender discrimination at Roswell, which all appeared to fall on completely deaf ears as hospital "politics" and doctor egos took precedence. In the meantime, and apparently not part of Roswell's concern, patients were suffering.

5. Ultimately, Dr. Grand'Maison notified the upper reaches of Roswell's management that she questioned the competence of Dr. Carl Morrison, Roswell's lead sarcoma pathologist and Chair of Pathology, and shortly thereafter made it known that she had gathered

medical records to establish numerous specific misdiagnoses—leading to numerous mistreatments—he had made. Only days later, after five years of employment, Roswell forced Dr. Grand'Maison out of her job and the hospital. This was completely blatant retaliation, which is unfortunately consistent with Roswell's well-documented conduct towards others who have raised complaints of unlawful conduct.

NATURE OF CLAIMS

6. Roswell's conduct constitutes egregious violations of numerous federal, state and local laws, including, without limitation, the Equal Pay Act of 1963, 29 U.S.C. 206(d) (the "EPA"), the New York Not-for-Profit Corporation Law § 715-b *et seq.* ("NPCL"), New York Labor Law §§ 194, 740 and 741 *et seq.* ("NYLL"), New York State Human Rights Law § 290 *et seq.* ("NYSHRL") and the Buffalo Administrative Code § 154-11 ("Buffalo Code").

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action involves federal questions regarding the deprivation of Plaintiff's rights under the EPA. The Court has supplemental jurisdiction over Plaintiff's related claims arising under State law pursuant to 28 U.S.C. § 1367(a).

8. 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 employment practices alleged herein, occurred in this district.

ADMINISTRATIVE PREREQUISITES

9. Plaintiff will file a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), and she will move for leave to file an Amended Complaint

alleging violations of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* ("Title VII") following the EEOC's issuance of a Notice of Right to Sue.

10. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

11. Plaintiff, Anne Grand'Maison, M.D., is a Canadian citizen and a resident of Erie County, New York. At all relevant times, Dr. Grand'Maison was an "employee" of Defendants Roswell and HRI as defined by the relevant federal and state statutes.

12. Defendant Roswell Park Comprehensive Cancer Center is a corporation located in the City of Buffalo, New York and the County of Erie, New York. At all relevant times, Roswell was an "employer" of Dr. Grand'Maison as defined by the relevant federal and state statutes.

13. Defendant Health Research, Inc. Roswell Park Division is a domestic not-for-profit corporation with its principal place of business located in the Village of Menands, New York and Albany County. At all relevant times, HRI was an "employer" of Dr. Grand'Maison as defined by the relevant federal and state statutes.

14. Defendant Candace Johnson, Ph.D. is, upon information and belief, a citizen and resident of the state of New York. At all relevant times, Dr. Johnson was the President and Chief Executive Officer of Roswell and was an "employer" of Dr. Grand'Maison as defined by the relevant federal and state statutes.

15. Defendant Renier Brentjens, M.D., Ph.D. is, upon information and belief, a citizen and resident of the state of New York. Beginning in August 2021 and at all relevant times thereafter, Dr. Brentjens was the Deputy Director and Chair of Medicine at Roswell. At all relevant times, Dr. Brentjens was an "employer" of Dr. Grand'Maison as defined by the relevant federal and state statutes.

16. Defendant Carl Morrison, M.D., DVM is, upon information and belief, a citizen and resident of the state of New York. In April 2019, Dr. Morrison was promoted to the newly created role of Senior Vice President of Scientific Development and Integrative Medicine at Roswell, and he was promoted again in September 2021 when he took on the additional role of Chair of Pathology and Laboratory Medicine at Roswell.

17. Defendant John Kane III, M.D. is, upon information and belief, a citizen and resident of the state of New York. At all relevant times, Dr. Kane was the Chair of Surgical Oncology and Chief of the Melanoma/Sarcoma service at Roswell.

18. Defendant Errol Douglas, Ph.D. is, upon information and belief, a citizen and resident of the state of New York. At all relevant times, Dr. Douglas was the Senior Vice President, Chief Human Resources Officer at Roswell.

19. Until January 2018, Roswell was comprised of two organizations, Roswell Park Comprehensive Cancer Institute Corporation ("RPCI") and HRI. RPCI and HRI were joint employers and/or a single employer of Plaintiff, and controlled the terms and conditions of Plaintiff's employment, including the acts complained of herein. In January 2018, RPCI changed its name from Roswell Park Comprehensive Cancer Institute Corporation to Roswell Park Comprehensive Cancer Center. Since January 2018 Roswell has been comprised of RPCI and HRI.

FACTUAL ALLEGATIONS

I. Dr. Grand'Maison's Background and Expertise

20. Dr. Grand'Maison is a highly trained physician with an uncommon breadth of experience cutting across multiple disciplines.

21. She has published significant peer-reviewed papers in these fields, has been extensively invited to speak about her research and clinical experience, and is regularly invited to review manuscripts.

22. In 1988, Dr. Grand'Maison received her Medicine Doctorate (M.D.) from Sherbrooke University in Sherbrooke, Canada and immediately thereafter spent two years as a resident in Family Medicine at Saint-Sacrement Hospital at Laval University ("Laval") in Quebec City. Dr. Grand'Maison was invited to stay on at Laval and practiced Family Medicine there for three more years.

23. She spent the next five years developing a specialty in internal medicine with a sub-specialty in hematology, becoming certified in hematology in 1998.

24. Further deepening her medical knowledge, Dr. Grand'Maison then attended McMaster University for a Clinical Research fellowship in hematology. After completing four years of practice as a hematologist, Dr. Grand'Maison enrolled in the master's degree program in Clinical Epidemiology at the University of Toronto.

25. Two years later, she transferred to the PhD program in Health Policy Management and Evaluation at the University of Toronto, where she completed all the coursework toward a doctorate. She then conducted research for several years before returning to practicing medicine.

26. In 2009, Dr. Grand'Maison joined Mt. Sinai Hospital ("Mt. Sinai") in Toronto, practicing general hematology with an expertise in thrombosis and hemostasis in maternal and fetal medicine.

27. While working at Mt. Sinai, Dr. Grand'Maison had the opportunity to observe the work of a colleague who was a sarcoma medical oncologist, and she became fascinated with the field of sarcoma oncology.

28. She relished the challenge of researching sarcoma because its rarity and complexity (there are more than 100 subtypes of sarcoma) meant there remained significant unexplored territory for researchers. But most importantly, practicing in sarcoma oncology provided Dr. Grand'Maison the opportunity to make a real and meaningful difference in patient lives—the field desperately needs more doctors with expertise, dedication and focus.

29. In 2014, Dr. Grand'Maison completed her training at McMaster University and became certified in medical oncology. Dr. Grand'Maison then secured a highly coveted clinical and research fellowship in sarcoma medical oncology at MD Anderson in Houston, Texas, one of the world's most respected cancer centers.

30. For 2021-2022, MD Anderson was rated the nation's top cancer hospital by U.S. News & World Report, and it has been named one of the nation's top two hospitals for cancer care every year since the survey began in 1990.[1]

31. MD Anderson is renowned for its treatment of sarcoma patients because it has the highest volume of sarcoma cases of any hospital in North America and the best survival outcomes for sarcoma patients. MD Anderson's success rate is attributed to the aggressive treatment approach it pioneered which prescribes inpatient high dose chemotherapy before and after surgery for most high-risk sarcomas. Quite simply, MD Anderson is the "gold standard" for diagnosis and treatment of sarcoma.

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[1] See e.g., 2021-2022 U.S. News & World Report "Best Hospital" rankings, available at: https://health.usnews.com/best-hospitals/rankings/cancer.

32. In 2016, as she was completing her fellowship at MD Anderson, Dr. Grand'Maison learned that Roswell was looking to hire a sarcoma medical oncologist. She was initially interviewed by phone by Dr. Marc Ernstoff, then Chair of the Department of Medicine and Senior Vice President of Clinical Investigation.

33. She subsequently travelled to Buffalo and spent two days meeting other members of Roswell's sarcoma team, including Dr. Carl Morrison, then the sarcoma clinic's lead pathologist,[2] and Dr. John Kane, Chair of Surgical Oncology and Chief of the Melanoma/Sarcoma service.

34. Roswell offered Dr. Grand'Maison a full-time position as an Assistant Professor of Oncology in the Department of Medical Oncology in the Sarcoma Division, reporting to Dr. Ernstoff.

35. Like all new faculty at Rowell, Dr. Grand'Maison's employment agreement provided for a five-year probationary appointment running from her first day of work on November 1, 2016. The agreement provided that she would spend 50 percent of her time on clinical work, 40 percent conducting research and 10 percent on administrative matters.

II. Dr. Grand'Maison Becomes Roswell's First Sarcoma-Trained Medical Oncologist

36. Dr. Grand'Maison was Roswell's first medical oncologist with a subspecialty in sarcoma. This meant that she brought a more critical, in-depth approach to sarcoma diagnosis and treatment than the medical oncologists who had previously worked with the Roswell sarcoma team.

[2] In April 2019, Dr. Morrison was promoted to the newly created role of Senior Vice President of Scientific Development and Integrative Medicine at Roswell, and he was promoted again in September 2021 when he took on the additional role of Chair of Pathology and Laboratory Medicine.

37. She also brought with her the advanced techniques and aggressive treatment pioneered by MD Anderson. These approaches had never been used at Roswell before.

38. Thus, Dr. Grand'Maison employed certain different protocols and methods than those to which others had become accustomed at Roswell.

39. For instance, Dr. Grand'Maison used a very focused approach to closely monitor toxicity levels during inpatient chemotherapy which included regular, almost daily meetings with such patients immediately after the floor nurses administered the treatment. This was a level of direct doctor-patient care that did not previously exist in the sarcoma clinic.

40. Another MD Anderson protocol Dr. Grand'Maison implemented at Roswell was prescribing a high-dose inpatient chemotherapy regimen for high-risk sarcoma patients which required close monitoring after discharge through intravenous fluids and blood work twice per week for two weeks following each cycle of chemotherapy.

41. If the blood work showed that a patient's red blood cells or platelets were too low, the Advanced Practice Providers ("APPs")[3] would arrange for a blood transfusion at a hospital near the patient's home; likewise, if the white blood cells were too low, the APPs would arrange for a local hospital to admit the patient for the administration of additional treatment, including intravenous fluids and antibiotics, and subcutaneous growth factors to stimulate bone marrow to produce more white blood cells.

[3] APPs include nurse practitioners and physician assistants.

42. Patients greatly appreciated Dr. Grand'Maison's level of attentiveness and direct care and even reported overhearing the nurses complimenting her acumen. As just one of many examples, a patient of Dr. Grand'Maison wrote to Dr. Candace Johnson (Roswell's President and CEO) in April 2021:

> Each time I come in for a treatment I would always hear, '[Dr. Grand'Maison] is the best we have' from the nurses and staff. Indeed Roswell is blessed to have her. . . . I am [elderly], so have had my share of doctors. Never ever have I had one that is so knowledgeable, caring and compassionate. In fact, when I was going through a particularly difficult time, she even called me at our home on a weekend to inquire how I was feeling! More than once when I had to be hospitalized for treatment, she would always come in to visit me at the end of her day, black bag and purse in hand, on her way home to her family.

43. Dr. Grand'Maison received similar praise from many physicians and other colleagues, including Dr. Andrew Fabiano, who wrote in a letter of support:

> . . . . I have found her to be an assiduous, caring physician and trusted colleague. . . . [S]he demonstrates an expertise of her patients and their clinical situations. . . . I appreciate very much as a colleague the compassion Anne has demonstrated for her patients and the personal care she provides at the time of cancer recurrence or difficult end-of-life discussions. . . . I am fortunate to have her as a colleague. She has provided outstanding care to numerous shared patients and I trust her to assist on complex patients in the future. She has my full support and I would trust her to provide care to my family members.

44. Similarly, Lem Mogavero (Nurse Manager/Registered Nurse), said of Dr. Grand'Maison:

> The personalized care and attention Dr. Grand'Maison shows to her patients is unmatched. She grows an extremely close bond with her patients and has always expected a high level of care for them. With that being said, she works closely with the nursing staff to communicate any issues or wishes that she has for her patients and is always available to answer questions that they may have. The population that Dr. Grand'Maison serves (sarcoma) can be

> emotionally taxing on anyone, however, her ability to connect and communicate plans of care help put her patients at ease.

45. Bonnie Blum (Registered Pharmacist), who has spent more than 30 years at Roswell, confirmed that,

> I enjoy working with such a wonderful caring physician. Dr. Grand'Maison is extremely dedicated to her patients and the patients appreciate this attention to their care. She is very kind and generous to her staff.

46. Kimberly Celotto (Physician's Assistant) issued glowing praise about Dr. Grand'Maison's approach, style and communication:

> Dr. Grand'Maison has been a pleasure to work with. Not only does she demonstrate extensive compassion for her patients, but she would always offer words of advice and wisdom for patients that the myeloma service was treating when we would discuss difficult cases. I think that is what impressed me the most about her. Not only is Dr. Grand'Maison a dedicated sarcoma physician, but the level of commitment and 'patient's first' attitude would extend past her own clinic. I found her willingness to extend her knowledge, time and energy to other cancer patients is exactly what embodies a Roswell Park oncologist, putting patients first . . . As a [PA], one of the most rewarding aspects aside from patient care is finding a physician that you can openly collaborate with. I personally feel that I have found that with Dr. Grand'Maison. She has always treated me as her equal and has held me in high regard.

47. Dr. Grand'Maison's approach did, however, encounter some resistance from those more familiar with Roswell's previous standard operating procedures. For example, some APPs misinterpreted Dr. Grand'Maison's practice of seeing patients on days when chemotherapy was administered as a lack of confidence in their abilities.

48. APPs also resented that the twice weekly intravenous fluid and blood work protocol generated more work for them in terms of reviewing the blood work, calling the patients to share the results, working with local hospitals to administer the intravenous fluids and ordering any necessary treatment indicated by the blood work.

49. But Dr. Grand'Maison's intention was always strictly patient-focused and consistent with the best practices she learned at MD Anderson for monitoring the risk of severe chemotherapy toxicity.

50. Dr. Ernstoff, in an attempt to assuage the feelings of the APPs, at times tried to dissuade Dr. Grand'Maison from investing so much time monitoring the inpatient chemotherapy. He even stated, to Dr. Grand'Maison's shock, that she need not worry about spending so much time monitoring the patients for toxicity because "errors are allowed."

51. Dr. Grand'Maison responded that she did not wake up and start her day allowing "room for error" and that she wanted to see her patients to make sure that they were safe. In short, Dr. Grand'Maison was focused 100 percent on providing the best possible patient care and found the desire to placate APPs or let hospital "politics" interfere with patient safety to be completely unacceptable.

52. Another area where Roswell differed from the best practices employed at MD Anderson was in the tenor of its sarcoma Tumor Board meetings.[4] Dr. Grand'Maison experienced Tumor Board meetings at MD Anderson as a place where open inquiry and probing questions were not only welcome but encouraged—it was in many ways the entire purpose of the meeting—in the name of achieving the best possible outcome for the patient.

53. Tumor Board members at MD Anderson were unfailingly collegial and no one took offense, for instance, when a colleague asked for more information about a medical conclusion or suggested that additional testing be conducted to ensure the most accurate diagnosis and course of treatment possible.

[4] A Tumor Board is a tool for treatment planning in which doctors from different disciplines meet to review and discuss the diagnosis and treatment of patients. At Roswell, the sarcoma Tumor Board meetings regularly included a medical oncologist, radiation oncologist, surgeon, pathologist and others.

54. In contrast, Dr. Grand'Maison found the sarcoma Tumor Board at Roswell to be male-dominated, ego-driven, fraught with defensiveness and rife with a lack of collegiality almost from the very beginning.

55. An early and striking example occurred on April 17, 2017, less than six months after Dr. Grand'Maison joined Roswell, when the members of the sarcoma Tumor Board discussed a case which Dr. Carl Morrison had diagnosed as a chondrosarcoma.[5]

56. The course of treatment is different for each subtype of chondrosarcoma: conventional is treated with surgery only; mesenchymal with the VAC-IE chemotherapy regimen; and dedifferentiated with doxorubicin and cisplatin.

57. Dr. Grand'Maison asked Dr. Morrison what subtype he had diagnosed in order to plan the corresponding course of treatment. Rather than answer Dr. Grand'Maison's question, Dr. Morrison condescendingly asked her if she had ever seen a mesenchymal chondrosarcoma, his tone implying that she could not possibly add value to his diagnosis.

58. Dr. Grand'Maison had, in fact, treated patients at MD Anderson with the mesenchymal subtype so she said that she had. Dr. Morrison, his tone rising, repeated the question. Dr. Grand'Maison again answered, "Yes." Dr. Morrison then stood up from his chair, leaned toward her aggressively and loudly repeated his question for a third time. Dr. Grand'Maison was shocked into silence by his behavior, and, in the end, Dr. Morrison never answered the question.

59. Clearly Dr. Morrison was threatened by Dr. Grand'Maison's superior expertise with sarcoma and would not tolerate any line of inquiry by or dialogue with someone he perceived as "less than" him, patient care notwithstanding.

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[5] Chondrosarcoma is a bone cancer that develops in the cartilage.

60. Dr. Grand'Maison also understood his physically intimidating and aggressive conduct towards her as sexist, and it was a pattern of conduct that would persist in the years that followed. Dr. Grand'Maison never observed Dr. Morrison act that way towards the men in the Tumor Board meetings.[6]

61. Dr. Morrison's contentious response to a question germane to patient care was a singular experience in Dr. Grand'Maison's career to date, as she never had observed such a response at a single Tumor Board meeting at MD Anderson or at any of the five other Tumor Boards she participated in at Roswell.[7]

62. Dr. Grand'Maison was fearful that Dr. Morrison's outburst would deter others from asking questions at the Tumor Board to the detriment of patient care and that he would continue to fail to provide her with the information she needed to inform her decisions regarding the most safe and effective course of treatment for her patients.

63. She also knew that Dr. Morrison was a powerful presence at Roswell, by virtue of having been on the faculty for almost a decade before she arrived and because he counted Roswell's President and CEO Dr. Candace Johnson as a friend and ally.

64. On April 19, 2017, Dr, Grand'Maison emailed Dr. Kane as chair of the sarcoma team to raise these concerns.

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[6] It is well studied that one manner in which men attempt to assert their dominance over women is through physical demonstrations of force and/or imposition. See e.g., Bosson, Jennifer, et al., *Precarious Manhood and Displays of Physical Aggression*, Personality and Social Psychology Bulletin (March 2009) (finding that men use physically aggressive displays to validate their manhood, especially when they perceived it has been challenged or is under threat by a woman).

[7] Each clinic at Roswell holds its own Tumor Board meeting. Dr. Grand'Maison attended Tumor Boards at Roswell for Gastrointestinal, Genitourinary, Neurology/Neurosurgery, Thoracic and Head/Neck cancer in addition to Soft Tissue/Sarcoma/Melanoma, which is referred to herein as the "sarcoma Tumor Board" or "Tumor Board."

65. She acknowledged that her colleagues might need to adjust to the different approach she took to sarcoma but stated that she did not think that such aggressive and disrespectful reactions from colleagues are "desirable for the sarcoma team or are helping patients."

66. Dr. Kane responded he was not present for the incident but that he heard it was "contentious." Rather than hold Dr. Morrison accountable (or even investigate what Dr. Grand'Maison reported), Dr. Kane merely replied that Dr. Grand'Maison and Dr. Morrison both "take things personally, even when they are not personal."

67. Dr. Grand'Maison later discussed these same concerns with her supervisor, Dr. Ernstoff.

68. She also received a call about the incident from Dr. Boris Kuvshinoff (Roswell's Chief Medical Officer) who stated that Dr. Morrison should not have treated her that way and, that while he knew the sarcoma Tumor Board was difficult because it was a "clique," she needed to persevere because her expertise was needed at Roswell.

69. This was a portent of things to come—Dr. Morrison would continue to try to intimidate Dr. Grand'Maison into silence and obstruct her attempts to refine diagnoses to ensure proper treatment, with Drs. Kane, Ernstoff and others enabling his behavior and ignoring the risk it posed to patient safety.

III. Dr. Grand'Maison Raises a Variety of Patient Safety Concerns

70. Throughout Dr. Grand'Maison's tenure at Roswell, Dr. Morrison demonstrated a shocking lack of up-to-date knowledge regarding the current medical understanding of sarcoma, which posed a direct threat to patient safety.

71. By way of example, at one of the first sarcoma Tumor Board meetings that Dr. Grand'Maison attended, Dr. Morrison was discussing a case where he diagnosed a spindle cell sarcoma, which is not a type of sarcoma but a descriptive term regarding the shape of the cells.

72. Dr. Grand'Maison asked him what subtype it was. He replied, "Does it really matter? They are all treated the same."

73. In fact, while 30 years ago all sarcoma subtypes were treated the same, in the last 10-15 years there have been remarkable advances in the ability to identify sarcoma subtypes through the use of genetic and molecular testing and, therefore, tailor treatment accordingly.[8]

74. The risk to patient safety posed by Dr. Morrison's failure to stay current was compounded by, among other things, his refusal to confirm the accuracy of his diagnoses by seeking out second opinions on difficult cases, at least when the cases belonged to Dr. Grand'Maison, adding significant delays in diagnosis.

75. It is beyond question that seeking out a second opinion, especially in difficult or unusual cases, is the best practice and established standard of care, so much so that Dr. Charles LeVea (Roswell's former Chief of Pathology), is featured prominently on Roswell's website extolling its importance:

> Because your first choice of cancer therapy is so important, **you should get more than one opinion regarding your diagnosis and treatment options**. Most patients and caregivers are concerned that asking their doctor about a second opinion will create an uncomfortable relationship with that doctor, which may negatively affect their medical care . . . According to the American Cancer Society however, it is not only common to get a second opinion, but most doctors are comfortable with it. In fact, some

[8] Ironically, in September 2021, when Dr. Johnson announced Dr. Morrison's promotion to Chair of Pathology and Laboratory Medicine, she cited his "drive" to "give patients a personalized treatment option tailored to them, resulting in better outcomes and quality of life." https://www.roswellpark.org/newsroom/202109-pioneer-precision-medicine-named-chair-roswell-park-pathology-department

> insurance companies recommend, and even require, a second opinion. **(<u>If your doctor responds negatively to the idea of a second opinion, you may want to consider whether this doctor is right for you</u>.)** And importantly, having more than one evaluation of test results and additional opinions regarding treatment options helps patients feel more confident in their decisions . . . A second opinion appointment should be at a different medical institution or physician office from the first, since you should involve a different group of clinicians and have your pathology reviewed by a different pathologist.[9]

(Emphasis added).

76. Yet this welcoming attitude toward second opinions seemed to apply to everyone at Roswell except Dr. Morrison when it came to Dr. Grand'Maison: he controlled access to pathology samples and repeatedly refused to send them out for a second opinion on her cases.

77. At a Tumor Board meeting the week of November 23, 2017, Dr. Morrison stated *categorically* that he would no longer send any sarcoma pathology out for a second opinion—an egregiously dangerous and anti-patient position to take.

78. As a result, Dr. Grand'Maison was at times able to obtain second opinions for her patients only by appealing directly to a higher up, such as Drs. Ernstoff and Kuvshinoff (Chief Medical Officer) or Dr. LeVea, (then Chief of Pathology).[10]

79. By 2022, Dr. Morrison simply stopped responding to Dr. Grand'Maison's emails when they included a request for a second opinion.

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[9] <u>See</u> <u>https://www.roswellpark.org/cancertalk/201807/every-opinion-counts</u> (emphasis added).

[10] In an email on November 20, 2017, Dr. Grand'Maison alerted Drs. Ernstoff and Kuvshinoff of Dr. Morrison's blanket refusal to request second opinions on sarcoma cases and complained that this could "cause[e] harm to patients." She followed up by email with Dr. Ernstoff on December 10, 2017 to say, "If a case needs further pathology because I cannot treat a patient safely, I will bring it to you. I will do my best to keep working at [Roswell], safely, productively and happily."

80. Dr. Morrison's resistance to second opinions was so detrimental and outside the norm that, on one occasion in particular in 2020, after he refused to send a pathology sample out for a second opinion on Patient No. 6 (described in detail below),[11] a case Dr. Grand'Maison was consulting on with pediatric oncologist Clare Twist, Dr. Twist emailed Dr. Grand'Maison and exclaimed, "I have to say this seems so strange to me. I have never encountered a situation where a pathologist refused to send out for 2nd opinion when a clinician requests it." And strange it was.

81. Indeed, Dr. Grand'Maison observed that male doctors who asked for second opinions on diagnoses from Dr. Morrison were not met with similar resistance. But Dr. Morrison obstructed Dr. Grand'Maison's ability to obtain a second opinion with such frequency that she responded to Dr. Twist,

> It is normal to me being part of this sarcoma team but absolutely unacceptable. It is a mix of issues among which ego and gender issues, power from men physicians who have big position on the 10th [executive] floor . . . .

82. In the end, Dr. Grand'Maison discussed the risk caused by Dr. Morrison's refusal to get a second opinion on that particular case with Dr. Gurkamal Chatta[12] and Dr. LeVea (who was still Chief of Pathology at the time), and they arranged for the samples to be sent out.

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[11] Patients identified as "Patient No. __" are referenced by the number assigned to them by Dr. Grand'Maison in the summaries of misdiagnosed cases which she provided to Dr. Brentjens in March 2022 (discussed in more detail below).

[12] Dr. Chatta became Dr. Grand'Maison's supervisor after succeeded Dr. Ernstoff as Chief of Medical Oncology. In mid-2020, Dr. Chatta tried to minimize the retaliatory nature of Dr. Morrison's refusal to send her cases out for a second opinion on the basis that Dr. Grand'Maison requested second opinions more often than other clinicians at Roswell. Although there is no defined "rate" at which oncologists should seek second opinions—it should be specific to each particular case—Dr. Chatta later apologized to Dr. Grand'Maison for this assertion, after reviewing data which confirmed that her rate of second opinion requests was consistent with other Roswell physicians.

83. In addition to appealing to higher ups at Roswell, Dr. Grand'Maison was forced to employ ingenuity in her attempts to surmount Dr. Morrison's resistance and ensure she had a correct diagnosis before prescribing a course of treatment.

84. As described more fully below, Dr. Grand'Maison was sometimes able to utilize genetic and molecular testing—which she could order without Dr. Morrison's approval—to help confirm a diagnosis. In other instances, she was able to circumvent Dr. Morrison by prevailing upon a technician in Roswell's pathology lab to send out samples for a second opinion.

85. When all else failed, Dr. Grand'Maison's patients were sometimes required to bear the expense, inconvenience, delays and potential negative impact on their health of physically travelling to meet with a doctor for a second opinion on Dr. Grand'Maison's advice.

86. This was a significant burden given that Dr. Grand'Maison's patients were very sick, and Roswell's location in Buffalo was a great distance from the institutions which housed the experts relied upon the world over to perform second opinions—such as Memorial Sloan Kettering Cancer Center in New York City ("MSK"), Dana Farber Cancer Institute in Boston ("Dana Farber") and MD Anderson in Texas.[13]

87. Dr. Morrison's failure to utilize second opinions appropriately was not the only patient safety concern raised by Dr. Grand'Maison. Throughout most of her time at Roswell, Dr. Grand'Maison was left without sufficient personnel to safely run her clinic.

88. For example, when Dr. Grand'Maison joined Roswell, at least one APP was supposed to work exclusively on sarcoma cases with her.

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[13] On November 20, 2017, Dr. Grand'Maison highlighted this burden on patients in an email to Drs. Ernstoff and Kuvshinoff in which she asked for their support to send the pathology out for two cases rather than have the patients travel to obtain a second opinion, noting that one patient could not travel easily because he was severely disabled by his cancer and another (Patient No. 1, described below) had a two month old baby and four other young children at home.

89. By June 2018, however, the APP's time was being shared, and dominated, by Dr. Igor Puzanov, who treated melanoma patients.

90. Dr. Grand'Maison therefore asked Dr. Ernstoff for support in finding an APP dedicated to working with her, but it took almost a year for him to secure someone.

91. The problem continued when Dr. Grand'Maison moved her clinical practice under the auspices of Roswell's Lymphoma, Myeloma and Infectious Disease clinic ("LMI") in 2019 at the suggestion of Dr. Chatta.[14]

92. It became clear after her first few months in LMI that she desperately needed the help of APPs, as she was seeing twice as many patients as when she was at MD Anderson.

93. Dr. Grand'Maison emailed Dr. Chatta and Stephen Schinnagel (Roswell's Sarcoma Program Administrator) numerous times in November 2019, expressing how the lack of an APP forced her to perform the clinic's administrative duties typically handled by APPs on the days she was supposed to conduct research, leaving her completely depleted and unable to complete all her research.

94. Still, no additional help was provided.

95. For long stretches of time, Dr. Grand'Maison was also without a dedicated pharmacist, whose job is to educate the patient about the chemotherapy protocol—including scheduling, logistics, and potential side effects—in addition to obtaining informed consent and signing off on the chemotherapy prescribed by the doctor.

[14] Dr. Chatta suggested she move to LMI where she could see sarcoma patients in a more supportive environment. Dr. Grand'Maison had a very successful tenure in LMI from September 2019 until she was forced to resign in 2022, so much so that Dr. Francisco Hernandez-Ilizaliturri (Roswell's Chief of Lymphoma) stated in an email to Dr. Chatta and others on April 17, 2020, "We [have] had an incredible time working with [Dr. Grand'Maison] and our team really enjoy[s] her presence in our clinic . . . we are very fond of her."

96. As a result, Dr. Grand'Maison was often required to spend time providing patient education and obtaining patient consent herself while working in an already very busy clinic. This situation lasted for a full year.

97. The depth of her exhaustion was palpable when she wrote Dr. Chatta, "I cannot keep doing this. It is not acceptable, not humanly possible and abusive." She suggested numerous short- and long-term solutions to the chronic lack of clinical support, including bringing in a nurse to help until an APP could be found, sharing an APP with another physician and pooling cases with LMI rather than the sarcoma clinic so that LMI could use their budget to hire support for her, all to no avail.

98. The lack of clinical support extended into 2020 and 2021, even though Dr. Grand'Maison was able to demonstrate, using data maintained by Roswell, that she had less clinical support than doctors with significantly fewer and less sick patients.

99. In April 2021, Dr. Grand'Maison laid out the severity of the situation in no uncertain terms in an email to Dr. Chatta, Mr. Schinnagel, Shirley Johnson (former Senior Vice President and Chief Nursing Officer) and Cheryl Raczyk (APP Chief):

> [Dr. Igor Puzanov] works with 2 full time APPs and a nurse coordinator. Over the last 2 years, I had one APP for 8 months (8/24) . . . I don't know what your plans are. I can just tell you that this week made me feel how exhausted I am and definitely acknowledging that I cannot keep doing what I have been doing over the last 2 years. To have [an APP] that I have interviewed and chosen to be the best person for me, directed to a provider, Dr. Mahoney, who has a much lighter practice than me in terms of numbers, no inpatients, no [chemotherapy] patients, low acuity . . . is very upsetting . . . The only thing that kept me to Roswell Park so far was the hope to be able to advance sarcoma research which is not possible in that setting. You must find a solution now to support me.

100. However, Roswell failed to provide Dr. Grand'Maison with the proper clinical support she so often requested and said was needed. Roswell's failure to do so demonstrated an unacceptable lack of concern both for Dr. Grand'Maison and for her patients.[15]

101. Dr. Grand'Maison's patients faced other elevated safety risks due to the under-resourced sarcoma clinic.

102. For example, in April 2021, two of Dr. Grand'Maison's patients complained directly to Dr. Candace Johnson that lack of support in Dr. Grand'Maison's clinic meant that they had to wait more than two hours to be seen and a third one wrote, "Today when I checked in at my appointed time, the desk clerk said, 'Dr. Grand'Maison is behind because she has no help.'"

103. The other patient said, "I don't want to see other patients there who are sicker than me to not be able to continue to receive the best care, or worst [sic] that there happen[s] a human error because the staff is overworked or rushed."

104. Even more appalling is that Roswell's refusal to give Dr. Grand'Maison's clinic adequate support meant these immunocompromised patients and untold others were required to sit in a waiting room for unnecessary additional hours on end during a global pandemic, thereby needlessly increasing the possibility that they would be exposed to COVID.

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[15] Roswell's lack of clinical support for Dr. Grand'Maison did not go unnoticed by her colleagues. In a letter of support sent to Dr. Errol Douglas (Senior Vice President, Chief Human Resources Officer) and David Scott (Director of Roswell's Diversity, Equity and Inclusion Office), Dr. Grace Dy (Chief of Thoracic Oncology) praised Dr. Grand'Maison's "astute clinical judgement and experience" while pointedly noting that "[Dr. Grand'Maison] strives to deliver high-quality patient care **despite the challenges she faced due to inadequate resource support**." (Emphasis added).

IV. Dr. Grand'Maison is Branded "Not Collegial" For Raising Concerns

105. Dr. Grand'Maison never gave up on bringing these issues to light, despite her complaints falling on deaf ears to that point. She also was not deterred by the hostility directed at her for speaking up about her concerns. Her persistent efforts proved fatal to her career at Roswell.

106. In a September 14, 2020 email to Dr. Grand'Maison (which copied Drs. Kane and Varun Chowdhry (Sarcoma Radiation Oncologist)), Dr. Morrison threatened to go to Human Resources ("HR") if Dr. Grand'Maison did not agree that she would no longer "challenge" pathology and surgery presentations.

107. Dr. Grand'Maison immediately understood this as an attempt to intimidate her into keeping quiet about patient safety concerns at Tumor Board meetings.

108. Dr. Morrison made good on that threat the following June 2021, when he and Dr. Kane complained to HR that Dr. Grand'Maison was "not collegial" during those meetings. Confident that audio recordings Roswell made of the Tumor Board meetings would prove her to be entirely professional and collegial, Dr. Grand'Maison urged Dr. Chatta to review them and to send them to Dr. Kuvshinoff, as well.

109. She also asked Errol Douglas (Senior Vice President, Chief Human Resources Officer) and David Scott (Director of Roswell's Diversity, Equity and Inclusion Office), to conduct a similar review of the recordings and provided them with the names of other doctors, including surgeons Dr. Gary Mann and Dr. Joseph Skitzki, who would attest to her collegiality at the meetings and in other interactions with her.

110. To her knowledge, they never reviewed the recordings nor spoke to the doctors she named about their interactions with her.[16]

111. Less than two weeks later, Dr. Chatta and Mr. Schinnagel met with Dr. Grand'Maison to provide her with a performance evaluation.[17] They did not address her tremendous success in growing the number of patients seen in the sarcoma clinic**,** the large increase in the number of patients admitted for chemotherapy, the trusted working relationships she built with members of the lymphoma clinic or the extraordinary level of patient care for which she is well known.

112. Rather, they said that they would recommend her probationary period be extended by one year[18] and handed her a one-page Word document[19] of "talking points" which focused exclusively on her supposed lack of collegiality with the sarcoma Tumor Board, "challenged relationships" with APPs and "difficult relationships" with clinic staff in the past. They also falsely claimed she was not open to feedback.

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[16] Shortly before the start of the pandemic, Dr. Grand'Maison met with Dr. Chatta, Dr. Hernandez-Ilizaliturri and Mr. Schinnagel to discuss the tenor of the Tumor Board meetings. Since none of those men attended the meetings, it was suggested that the meetings be recorded to corroborate Dr. Grand'Maison's assertion that it was Dr. Morrison, not she, who was failing to act in a collaborative and collegial manner. Dr. Grand'Maison's understanding is that the Tumor Board meetings were recorded throughout the pandemic. Although Dr. Douglas and Dr. Scott initially told Dr. Grand'Maison they would review the recordings, in a subsequent meeting, Dr. Scott and Dr. Douglas gave differing and internally inconsistent accounts of the recordings: Dr. Scott said he listened to two of the recordings and claimed that the others were not available; Dr. Douglas stated that the recordings were unavailable but in the same conversation said they had not been reviewed because of patient privacy concerns under HIPAA.

[17] Per her employment agreement with Roswell, Dr. Grand'Maison was expected to receive annual performance reviews, but this was the first time in almost five years at Roswell that she had received a formal evaluation.

[18] According to Roswell's Probation Period Policy No. 202.1, probation extensions are granted at the request of the probationer's supervisor and upon the approval of the Director of Employee & Labor Relations or her designee.

[19] The paper included a commitment to meet with Dr. Grand'Maison to discuss her "progress", but the three never met as a group again.

113. Not only is Dr. Grand'Maison open to feedback, she encourages it and is accustomed to a robust dialogue regarding sarcoma diagnoses and treatment options as was the standard at MD Anderson.[20] It was her Roswell superiors—most prominently, Dr. Morrison—who stymied an open flow of ideas.

114. From Dr. Grand'Maison's perspective, this supposed "lack of collegiality" was Dr. Morrison's gendered code to describe women who refused to fall silent in the face of a senior male doctor.

115. Dr. Grand'Maison again asked that the Tumor Board recordings be reviewed and stated that she never had a conflictual Tumor Board meeting at MD Anderson or at any of the five other Tumor Boards she attended at Roswell.

116. Dr. Grand'Maison's experience at Roswell is consistent with the systemic mistreatment female doctors continue to face.[21] Dr. Grand'Maison never observed her male doctor colleagues being treated the way she was by her superiors.

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[20] In fact, when pressed, the only example they offered regarding not being open to feedback related to personal leave Dr. Grand'Maison took the previous month following the death of her mother. Only three days after her mother died and freshly grieving, Dr. Grand'Maison responded to an email from an administrative associate inquiring who would cover her patients while she was gone by expressing her frustration that Roswell's failure to provide her with APPs routinely left her without coverage when she had to be away from the clinic for any length of time. In other words, Dr. Chatta and Mr. Schinnagel turned Roswell's lack of clinical support against her during the evaluation.

[21] It is important to note that the treatment Dr. Grand'Maison was subjected to by male doctors is unfortunately not an uncommon experience for women in medicine. Numerous articles and studies have found that many male doctors, whether through explicit or implicit bias, treat their female counterparts deplorably and that women must, therefore, overcome substantial barriers to opportunity as doctors. In fact, a recent study by the British Medical Association found that an astonishing *90 percent of female doctors* have faced sexism at work. See https://www.theguardian.com/society/2021/aug/26/more-than-90-per-cent-female-doctors-have-faced-sexism-at-work-finds-bma. In 2021, the Washington Post published an article *Patients Get Better Care from Doctors Who Are Women. But Sexism Persists in Medicine*, which described the numerous hurdles to advancement for female doctors, even though female doctors provide care that rivals or succeeds that of their male colleagues. See

117. The irony of this situation is that the very qualities Dr. Grand'Maison's male superiors found so threatening—*i.e.* the "temerity" to question someone else's conclusions; investigating every avenue in a case; refusing to accept pat conclusions when faced with contrary evidence and thinking (and importantly, asking questions) outside the box—are the very things her patients prized in her and were considered assets at MD Anderson.

118. One patient wrote to Dr. Johnson in 2022 to, in his words,

> . . . extol the excellent work ethic, deep and painstaking analysis and unique approach with which Dr. Anne Grand'Maison investigated my problem . . . Rather than accept an assumed diagnosis, she analyzed my case in great detail . . . What is so refreshing about Dr. Grand'Maison is that she is such a contrarian thinker. While [my spouse] and I have had wonderful doctors at Roswell, we never experienced anyone with the dedication, skepticism and thoroughness which Dr. Grand'Maison brings to her work.

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https://www.washingtonpost.com/outlook/2022/01/21/patients-get-better-care-female-doctors-sexism-persists-medicine. According to one study cited in that article, *The Current Status of Women in Surgery* from the Journal of American Medical Association Surgery ("JAMA Surgery"), 38.5 percent of female surgeons reported gender being a barrier to career advancement. See https://jamanetwork.com/journals/jamasurgery/article-abstract/2768006. Another recent study, cited by JAMA Surgery, found low scores for behavior supportive of female doctors and high scores for behavior unsupportive of female doctors. Id. The discrimination against female doctors has been happening for generations. However, even as female doctors became more prevalent, "men continued to dominate higher status specialties" particularly in leadership positions, as reported by the Washington Post, citing a 1992 study by the Association of American Medical Colleges. See https://www.washingtonpost.com/outlook/2022/01/21/patients-get-better-care-female-doctors-sexism-persists-medicine. Moreover, "aggressive culture" in hospitals which had been established for decades by male doctors persisted and still persists today. For example, as explained by JAMA Surgery, "a female surgeon speaking up in a group setting may be described as 'pushy' while a male surgeon who speaks up in the same is described as 'persuasive.'" Women, even today, "report being taken less seriously than men . . . and do additional work to gain collaboration from other healthcare workers," all of which "have the direct consequence of undermining women's authority as doctors by creating an environment in which women's skills and expertise are routinely questioned." See https://www.washingtonpost.com/outlook/2022/01/21/patients-get-better-care-female-doctors-sexism-persists-medicine. As explained by the Washington Post, "when women advocate for their patients, they sometimes face steep consequences, including dismissal." Id.

119. In August 2021, the month after the performance evaluation meeting, Dr. Renier Brentjens joined Roswell as Deputy Director and Chair of Medicine.

120. Hopeful that her situation would improve with the arrival of a new executive, Dr. Grand'Maison set up a meeting with Dr. Brentjens to introduce herself and left his office optimistic that things would turn around at Roswell.

121. When she learned, to her surprise, a few weeks later from a colleague at another cancer center that Roswell was advertising an open position for a sarcoma medical oncologist, she emailed Dr. Brentjens and asked whether this was to facilitate her termination or provide her with support.

122. She also shared with him for the first time the struggles she encountered at Roswell, stating:

> I have previously expressed to my supervisors my concerns about working in a hostile and counterproductive environment over the last 5 years. During this time, I have worked diligently and utilized my expertise to support the sarcoma population of Western New York. I've performed my work despite what appears to be an intentional lack of clinical resources and obstruction from my sarcoma colleagues (surgeons and pathologist) in collaborating and discussing difficult cases. Despite these obstacles, I have used my best efforts to obtain accurate diagnoses to develop the best possible management plan for the patient, which is the stated goal of [Roswell].

123. In response, Dr. Brentjens assured Dr. Grand'Maison that the new hire was intended as additional help for her, and that Roswell would be setting up a "mentorship committee" chaired by Dr. Ermelinda Bonaccio to "assist in your career development."

124. The following week, on September 23, 2021, Dr. Grand'Maison, Dr. Brentjens and Susan Johnson (Director of Employee & Labor Relations), met to discuss her probation

evaluation which is required at the end of the standard five-year probationary period under her employment contract.

125. Dr. Brentjens expressed surprise that Dr. Grand'Maison had been required to serve as the sole medical oncologist in such a busy clinic.

126. The evaluation praised Dr. Grand'Maison for her clinical expertise and dedication to her patients, stating, "She is very highly regarded by her patients and she is a valuable asset to the institution."

127. Much to her shock, it then laid entirely at Dr. Grand'Maison's feet blame for the very patient safety concerns and ensuing hostility she had been complaining about for years, asserting that " . . . her poor interactions with the other members of the Roswell Park Sarcoma team . . . has resulted in significant dysfunction within the team which may ultimately be detrimental to optimal patient care."

128. It also addressed her lack of research progress even as it acknowledged Dr. Grand'Maison's long-standing complaint that the lack of clinical support she received as her clinic was rapidly expanding played a role in eroding the amount of time she could dedicate to research.

129. It concluded by extending her probation for one year, as foretold by her prior meeting with Dr. Chatta and Mr. Schinnagel, agreeing to provide her with increased clinical support and establishing the Mentoring Committee Dr. Brentjens had previously mentioned.

130. The Mentoring Committee[22] met for the first time on October 28, 2021 and presented an action plan which delineated research goals for Dr. Grand'Maison, established

[22] The Mentoring Committee was comprised of Drs. Brentjens, Ermelinda Bonaccio, Grace Dy, Sandra Gollnick and Joyce Ohm.

leadership coaching for her,[23] memorialized Dr. Brentjens's support for Dr. Grand'Maison's stated need to hire more clinical staff for the sarcoma service, and committed Dr. Brentjens to meet with Drs. Morrison and Kane to "ask them to be willing to reset the dynamics" in the sarcoma team.

131. A few days later, Dr. Grand'Maison sent a follow up email to the Mentoring Committee reiterating her patient safety and discrimination complaints:

> In regards to [Dr. Morrison] and sarcoma pathology, **the medical oncologist, man or woman, should have the right to ask for an outside path[ology] review** when he or she feels it is necessary, when we don't know what the exact diagnosis is and this, for the benefit of the patient. The medical oncologist is the physician who is treating the patient and an accurate diagnosis is necessary, particularly in sarcoma as we are dealing with more than 100 different subtypes for which management is more and more histology specific… It should not be necessary for a patient to visit another center to get the pathology reviewed. [Dr. Morrison] should allow me to request it . . . and not be defensive if an outside pathology review is requested. From my side, this request should not be seen as "non collaboration". **This is about patient safety and good standard clinical practice**. . . . **Anybody, man or woman, should have the right to express themselves at sarcoma tumor board**. This is a place to exchange opinions, ideas and expertise and this in a constructive manner **for the benefit of the patient**. **There shouldn't be any gender issue,** hierarchy or ego involved and neither anymore [sic] letter or email of threats sent to me.

(Emphasis added).

132. Dr. Grand'Maison also emailed Dr. Brentjens, thanking him for his plan to meet with Drs. Morrison and Kane. She asked Dr. Brentjens to speak with Drs. Mann and Skitzki to

[23] Although it is not contained in the Mentoring Committee plan, Dr. Grand'Maison was told that Drs. Morrison and Kane would also be receiving coaching in an effort to "reset the dynamics" of the sarcoma team. Diane Roesch, the leadership coach who worked with Dr. Grand'Maison, told her the first time they met that her colleague had coached Dr. Morrison before, the implication being that previously he had had difficult relationships with other colleagues as well.

get a complete picture of the dynamics on the sarcoma team since she had excellent working relationships with them, and Dr. Mann was often present at Tumor Board meetings.

133. She received no response to either email and to her knowledge neither Dr. Brentjens nor anyone from HR ever spoke with Drs. Mann or Skitzki about their working relationships with Dr. Grand'Maison. Dr. Grand'Maison provided names of other colleagues who they could speak to as well, but as she understands it, no effort was ever made to speak to them either.

V. Roswell Seizes an Opportunity to Force Dr. Grand'Maison to "Resign"

134. On January 3, 2022, Dr. Grand'Maison received an email from Amy Rokitka (Clinical Practice Plan Coordinator), asking if she had sat for her board exam in Medical Oncology in 2017.

135. Although sitting for the boards is not a condition of her employment at Roswell, Dr. Grand'Maison had planned to take the exam in 2017 as board certification is a valuable accreditation.

136. Ultimately, she was not able to do so because Roswell's refusal to provide her with clinical support placed such a large administrative burden on her that she did not have time to study for the boards that year.

137. Not wanting to engage with Ms. Rokitka on the issue, Dr. Grand'Maison replied the next day and deflected by stating, "My husband is in the process of relocating to Canada and I will move back too of course. Ending date here at latest May 1st." Ms. Rokitka did not reply and Dr. Grand'Maison promptly forgot about the email exchange.

138. As it turned out, Dr. Grand'Maison was incorrect and her husband would not be relocating, but Dr. Grand'Maison did not feel the need to correct the record because no one ever

responded to her email and—as shown below—she was of the belief that Roswell was aware that he would not be relocating at that time.

139. Nonetheless, Roswell would seize on this email as a pretextual basis to force Dr. Grand'Maison out of the hospital and rid itself of a woman who had raised numerous concerns about patient safety that it preferred to ignore.

140. The very same day, Denise McIntyre (member of Roswell's Medical Staff Office) emailed an administrative assistant at another hospital where Dr. Grand'Maison's husband, Dr. Andre Charest, had privileges, stating that she "heard through the grapevine" that Dr. Charest was moving back to Canada.

141. She asked if the assistant knew the date so that she could start the process of resigning him from his duties at Roswell, where he also had privileges. The assistant forwarded the email to Dr. Charest with a copy to Ms. McIntyre, and Dr. Charest replied within minutes to correct that confusion and said that he had no intention to move back to Canada "for the next few decades" and jokingly added that the "grapevines need their ears tuned."

142. Dr. Charest continued the correspondence the next day by assuring Ms. McIntyre that if and when he ever was to resign, he would send Roswell an official resignation letter and notify the staff himself.

143. Thus, given that her husband had corrected the record himself, and no one else from Roswell had reached out to her since, Dr. Grand'Maison did not feel any need to send any follow up emails regarding the issue.

144. In early 2022, Dr. Grand'Maison attended the Tumor Board meeting and raised a patient safety concern arising out of Dr. Morrison's diagnosis for Patient No. 9, who presented

with a large retroperitoneal mass.[24] The previous summer, Dr. Morrison had issued a final pathology report[25] based on a biopsy and diagnosed Patient No. 9 with high grade leiomyosarcoma.

145. Relying on that diagnosis, Dr. Grand'Maison treated the patient with four cycles of inpatient chemotherapy which combined doxorubicin and dacarbazine. In late 2021, Dr. Kane operated on Patient No. 9 to remove the tumor.

146. After the surgery, Drs. Kane and Grand'Maison learned that Dr. Morrison had updated his report almost *five months earlier* to change Patient No. 9's diagnosis to dedifferentiated liposarcoma to reflect additional test results but failed to notify either one of them.

147. As a result, Patient No. 9 received inappropriate chemotherapy which was *significantly more toxic* than the doxorubicin-only regimen he would have received if Dr. Grand'Maison had known that the diagnosis had been changed.

148. At the Tumor Board meeting, Dr. Grand'Maison reiterated her comments from previous Tumor Board meetings that treatment for sarcoma can be very different from one type to another so changing a diagnosis can have a major impact on the treatment she prescribes.

149. She also repeated the request that she had made in prior Tumor Board meetings that Dr. Morrison notify her when he changes a diagnosis because it could impact patient care and outcomes.[26]

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[24] The retroperitoneum is an area in the back of the abdominal cavity.

[25] A "final" pathology report has no additional testing pending, so physicians can rely on it to determine the course of treatment. "Pending" reports indicate the pathologist is waiting on additional testing to confirm the diagnosis.

[26] Dr. Morrison's refusal to notify treating physicians regarding the issuance of, or changes to, pathology reports dates all the way back to the beginning of Dr. Grand'Maison's time at Roswell. On March 9, 2017, Dr. Grand'Maison emailed Drs. Morrison and Sule to say, "There

150. Dr. Kane joined in Dr. Grand'Maison's plea and agreed that Dr. Morrison's actions put Patient No. 9 at risk of receiving chemotherapy to which his tumor would not respond, rather than one which was simply more toxic, although thankfully that did not come to pass.

151. Dr. Morrison became defensive and blamed Roswell's electronic health records system for not having the capacity to alert treating physicians to a change in a pathology report. To Dr. Grand'Maison's knowledge, Roswell did not institute any consequences against Dr. Morrison for his conduct in Patient No. 9's case.

152. On January 12, 2022, the Mentoring Committee met again. At that time, Dr. Grand'Maison reported to the Committee that she had met her obligations as outlined in the action plan, including meeting with the leadership coach twice and submitting three research topic ideas.

153. Dr. Grand'Maison also presented evidence of her need for more clinical support, and Dr. Brentjens acknowledged at the meeting that she should be provided with more clinic staff.

154. The conversation then turned to the dynamic between Drs. Grand'Maison, Morrison and Kane. Leading up to the meeting, Dr. Morrison's attitude toward Dr. Grand'Maison had worsened, which led her to believe that Dr. Brentjens had spoken to him and Dr. Kane about resetting the dynamic with her and that it had not been well received.

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have been path[ology] reports for patients of mine transmitted directly to [another doctor] instead of me despite emails that I sent you. Not sure why? I have been actively involved in both cases, one was a new sarcoma case seen last Friday. Could you please, in the future, transmit path[ology] reports to myself when it is about my patients to ensure continuity of care and to avoid liability issues." He flatly replied, "Do not expect me to call any non-pathologist attending when I sign out a case. Do not send me emails asking me to do so as I cannot manage such notifications on a reliable basis and that would otherwise give false pretense that I may be doing so."

155. At the Mentoring Committee meeting she told Dr. Brentjens, "I know you have met with them," which Dr. Brentjens did not deny. Dr. Brentjens asked if things had improved between the three. Dr. Grand'Maison replied that things were getting worse.

156. She shared that, for example, she was unable to obtain diagnostic details about her patients because Dr. Morrison at times refused to engage with her at the Tumor Board, remaining silent instead of responding to her questions about cases.

157. In the weeks following the Mentoring Committee meeting, Dr. Morrison's intransigence toward Grand'Maison continued to harden.

158. For example, at a Tumor Board meeting in early 2022, Dr. Joseph Kuechle (an Orthopedic Oncologist), engaged in an extended colloquy with Dr. Morrison in which he asked questions about Dr. Morrison's final diagnosis on a case; Dr. Morrison's tone remained calm and polite throughout the exchange.

159. Approximately 30 minutes later, Dr. Grand'Maison asked Dr. Morrison for more detail about the diagnosis for Patient No. 1 (described in more detail below).

160. In particular, she inquired in a measured tone whether he was planning on doing more testing to determine if the tumor was a bone or soft tissue cancer because it would make a "huge difference" in how she will treat Patient No. 1.

161. She explained that Patient No. 1 was at high risk of developing widespread metastatic disease and had already received a significant amount of chemotherapy from the patient's previous bouts with cancer, making the potential impact of a misdiagnosis even more significant than in a typical case.

162. In stark contrast to his back and forth with Dr. Kuechle, Dr. Morrison was condescending and rude throughout the exchange, interrupting Dr. Grand'Maison no fewer than six times.

163. In an effort to diffuse the situation, Dr. Grand'Maison suggested three times that they continue the conversation outside the Tumor Board, but Dr. Morrison instead became more agitated and continued to berate her. The following is a portion of Dr. Morrison's conduct:

Dr. Morrison:	(interrupting Dr. Grand'Maison) Stop. (Continuing to talk over Dr. Grand'Maison) You don't use your terminology with precision. You throw these words out there and then everyone thinks it's true and it's not true.
Dr. Grand'Maison:	(sounding shocked) Oh. I, I don't think so because the thing is that . . .
Dr. Morrison:	(interrupting) Well, I *do* think so. And my opinion here is *I* am the pathologist, not you. Let's go to the next case before I get off Tumor Boards and quit doing this for you all.

164. True to his threat, Dr. Morrison never again presented a case or even spoke another word during a Tumor Board meeting for the remaining three months of Dr. Grand'Maison's tenure at Roswell.[27]

[27] Following the Tumor Board incident on April 17, 2017 referenced above, Dr. Grand'Maison emailed Dr. Kane to suggest that perhaps the best option was for her not to attend the meetings and instead interact individually with the Tumor Board members. He responded, "**That is not an appropriate professional solution**. It is also not acceptable as **it would be suboptimal care for our sarcoma patients**. Participating in [Tumor Boards] is part of the role that **we all play** in the sarcoma center. [Tumor Board] is one of those things that makes Roswell unique from the other cancer providers in the region." (Emphasis added). It is emblematic of how Roswell treated Dr. Grand'Maison and the extent to which it wanted to keep quiet issues concerning patient safety that Dr. Morrison was allowed to withdraw from presenting cases at the Tumor Board, but Dr. Grand'Maison was labeled "unprofessional" for suggesting the same thing and was required to continue to attend the meetings where she was continually subjected to his aggression and hostility.

165. In the weeks that followed, Dr. Grand'Maison's ability to obtain from Dr. Morrison information that was necessary for the treatment of her patients continued to deteriorate. For example, Dr. Morrison began to ignore Dr. Grand'Maison's emails about her patients' diagnoses.

166. As a result, Dr. Grand'Maison asked for a meeting with Dr. Brentjens to raise her concerns about the worsening dynamic, the hostile work environment and the patient safety risks due to the lack of accurate diagnoses**.**

167. On March 7, 2022, Dr. Grand'Maison met with Dr. Brentjens and complained that Dr. Morrison was engaging in conduct that was contrary to patient health and was hostile towards her. For example, Dr. Grand'Maison explained that Dr. Morrison was continuing to obstruct her from sending pathology out for a second opinion in difficult cases.

168. Dr. Grand'Maison stated that she felt strongly Roswell should push its diagnostic capability to the maximum for the benefit of patients, especially since it was a National Cancer Institute designated cancer center, marking it as one of 50 elite comprehensive cancer centers in the Unites States and entitling it to a $22.5 million federal grant.

169. In particular, Dr. Grand'Maison raised two particular cases which Dr. Morrison had refused to send to Dr. Cristina Antonescu, a world-renowned sarcoma pathology expert at MSK, for a second opinion.[28]

170. Dr. Grand'Maison explained to Dr. Brentjens that she had a good basis for asking that pathology be sent out in difficult cases such as these because she was aware of approximately 20 cases at Roswell where the diagnosis was incorrect.

[28] Both cases are discussed in more detail below.

171. She told Dr. Brentjens that she was coming to him for help because the sheer number of errors combined with Dr. Morrison's refusal to seek second opinions was making Roswell's practice unsafe. Dr. Brentjens ended the conversation by asking her to provide him with the misdiagnosed cases.

172. Dr. Grand'Maison ultimately provided Dr. Brentjens information regarding 19 cases where Dr. Morrison engaged in significant errors which created patient safety concerns. These cases include, *inter alia*, situations where Dr. Morrison misdiagnosed the wrong subtype of sarcoma, misdiagnosed the wrong cancer altogether and misdiagnosed as cancerous a tumor that turned out to be benign. While these cases are too lengthy to discuss each in detail here, three emblematic cases are described below.

- **Patient No. 4**

173. In 2012, Patient No. 4 was diagnosed by an outside medical practice with a melanoma for which the patient had surgery.

174. In the spring of 2020, the patient was discovered to have a large mass which was diagnosed by a pathologist outside Roswell as one specific type of sarcoma. Dr. Morrison agreed with the outside pathology report.

175. After seeing Dr. Kane, the patient was referred to a Roswell surgeon, Dr. Gary Mann, who performed surgery to remove the tumor. The post-surgical pathology report prepared by Dr. Morrison again diagnosed the tumor as the same type of sarcoma.

176. When the patient was referred to Dr. Grand'Maison for post-surgical chemotherapy, she brought the case to the Tumor Board to discuss treatment.

177. She asked Dr. Morrison whether it was possible the diagnosis could be melanoma rather than a sarcoma because (a) there was a prior history of melanoma and (b) Dr. Morrison's

report said the tumor arose from the mucosa, the first layer of the small bowel, which is very unusual for sarcoma. Dr. Morrison replied that it could not be melanoma because the tests he conducted showed that the markers were negative for melanoma.

178. Dr. Grand'Maison stated that the medical literature described cases in which melanoma loses its markers of differentiation at the end stage (Stage IV), making it appear to be the specific type of sarcoma he originally assessed.

179. Recognizing the challenges posed by the case, she asked to have the pathology sent out for a second opinion, but Dr. Morrison refused.

180. After the meeting, Dr. Grand'Maison emailed articles about the phenomenon of melanoma losing its markers to Drs. Morrison, Kane, Mann and others, but no one responded.[29]

181. Nonetheless, Dr. Grand'Maison was determined to find a way to confirm whether her opinion that this was a melanoma was correct because the treatment for sarcoma and melanoma is totally different.

182. Sarcoma is treated with a high dose of inpatient chemotherapy over five to six days in three-week cycles, which can be associated with potentially fatal toxicity due to sepsis, kidney failure or cardiac arrest. The toxicity also disables the patient for around four and a half months. Melanoma, on the other hand, is treated with outpatient immunotherapy and tolerated very well.

183. Most significantly, melanomas do not respond to sarcoma treatment and vice versa meaning an incorrect treatment plan could have deadly results for the patient.

[29] In January 2022, Dr. Grand'Maison again emailed Drs. Morrison and Kane articles about melanoma mimicking MPNST, stating that Roswell had seen similar misleading cases in the last few years and reiterating that the treatment for the two cancers is "totally different."

184. Denied the ability to request a second opinion, Dr. Grand'Maison came up with a workaround: she asked the outside medical practice that had the specimen from the 2012 melanoma biopsy to send it to Roswell for gene sequencing, a test she could order without first seeking approval from Dr. Morrison.

185. She also requested that the specimen from the surgery in 2020 be sequenced. The results came back with mirror image gene sequences, proving correct her theory that the 2020 tumor was melanoma resulting from the 2012 melanoma and not a sarcoma, as diagnosed by Dr. Morrison.

186. The patient was referred to the Roswell melanoma team where Dr. Paul Bogner, the dermatology pathologist, reviewed the gene sequencing and confirmed that the tumor was melanoma.

187. The patient was then treated for melanoma and thankfully responded well.

188. Had Dr. Grand'Maison been dissuaded by Dr. Morrison's outdated thinking and refusal to send the pathology out for a second opinion, there is no question that the patient would not have survived.

189. Shockingly, Dr. Morrison again insisted in two later cases that negative melanoma markers meant a tumor must be a sarcoma even after Dr. Grand'Maison reminded him of the outcome of Patient No. 4's case.

190. In all, five of the 19 misdiagnosed cases Dr. Grand'Maison provided to Dr. Brentjens had their diagnosis changed from sarcoma to melanoma.[30]

[30] Dr. Morrison wrote the reports for four of the five cases and Dr. Norbert Sule, a sarcoma pathologist who joined Roswell in 2017, wrote one.

- **Patient No. 15**

191. In late 2020, Patient No. 15 had surgery on lymph nodes and was treated afterward with radiation. Soon after, the cancer metastasized to one of the patient's vital organs.

192. Dr. Morrison diagnosed the initial occurrence of the cancer and the recurrence as sarcoma of a particular subtype.

193. The case was discussed several times at the sarcoma Tumor Board, where Dr. Grand'Maison shared her clinical impression that the cancer was actually a melanoma because (a) melanoma becomes very undifferentiated when it metastasizes, (b) the location of the primary tumor was in the lymph nodes and melanoma metastasizes there before spreading elsewhere, unlike the sarcoma subtype diagnosed by Dr. Morisson which metastasizes through the blood first, (c) the tumor was high grade and the sarcoma sub-type is typically intermediate grade, and (d) the tumor rapidly metastasized to the brain which is rare for sarcoma but characteristic of melanoma.

194. She therefore requested that Dr. Antonescu be allowed to provide a second opinion to confirm or rule out a melanoma diagnosis. Dr. Morrison denied her request.

195. In early 2022, Dr. Grand'Maison renewed her request in an email to Dr. Morrison and Dr. Sule, asking that pathology for Patient No. 15 and one other patient be sent to Dr. Antonescu at MSK.

196. She stated that the cases were urgent and wrote, "I am sure you agree that it is very important to have the right diagnoses to be able to treat these patients properly." She received no response.

197. Dr. Grand'Maison followed up with another email shortly thereafter asking for confirmation that the slides had been sent to Dr. Antonescu. She again received no response.

198. Several weeks later —and more than a month after her original email—Dr. Grand'Maison emailed Drs. Morrison and Sule a third time, asking if the cases had been sent to Dr. Antonescu. Dr. Morrison, at long last, replied albeit tersely: "No, and no intent to send to [MSK]."

199. Dr. Grand'Maison was once again faced with having to devise a workaround to an obstruction thrown up by Dr. Morrison in an effort to ensure her patient's safety was not compromised.

200. After several more weeks went by, she went directly to a pathology technician at Roswell and implored him to send the pathology specimens to MSK. The technician took heed of the urgency conveyed by Dr. Grand'Maison and sent the specimens to Dr. Antonescu.

201. Another week later, Dr. Grand'Maison's second to last day at Roswell, Dr. Antonescu's pathology report arrived and confirmed that the tumor was in fact a melanoma as Dr. Grand'Maison had asserted.

202. Fortunately for Patient No. 15, Dr. Grand'Maison had been providing treatment consistent with melanoma during the three months it took to overcome Dr. Morrison's resistance and get the specimen to Dr. Antonescu.

203. The patient responded well to the treatment, providing additional confirmation that the tumor was in fact a melanoma. Had Dr. Grand'Maison not chosen this path, Patient No. 15 would have lost six weeks of treatment time, received unnecessary high dose chemotherapy with the associated high toxicity and faced the possibility that the melanoma would have progressed further.

204. Dr. Grand'Maison emailed Drs. Morrison, Sule and Brentjens to tell them about Dr. Antonescu's findings. Dr. Morrison provided further proof that he refused to learn from his

mistakes at the risk of patient health by replying with his trademark arrogance intact that he stood by his original sarcoma diagnosis.

- **Patient No. 6**

205. Patient No. 6 came to Roswell in 2019 complaining of severe pain. Imaging revealed a mass and a biopsy was performed.

206. Based on the biopsy, Drs. Morrison and Sule diagnosed the patient as having a particular subtype of sarcoma.

207. After closely questioning Drs. Morrison and Sule about their diagnosis at the Tumor Board, Dr. Grand'Maison treated the patient with chemotherapy and post-operatively with radiation, consistent with the sarcoma subtype diagnosis.

208. Patient No. 6 then had surgery at another hospital with Roswell surgeons participating. The pathology report prepared by the other hospital on the surgical specimen diagnosed the tumor as consistent with a different type of cancer. The patient was referred to Dr. Twist for a consultation as she specializes in treating that type of cancer.

209. In mid-2020, Dr. Twist strongly advised that the specimens from both the initial biopsy and the surgery should be sent for a second opinion to Dr. Hiroyuki Shimada at the Stanford University Medical Center to confirm the correct diagnosis and determine the proper course of treatment.

210. Dr. Shimada developed the pathology classification system for this type of cancer and is responsible for reviewing all such cases in North America for patients enrolled in certain clinical trials.

211. Accordingly, Dr. Grand'Maison emailed Dr. Sule, with a cc to Drs. Shimada, Twist, Morrison, LeVea and Kane, asking for the specimens to be sent to Dr. Shimada. Dr. Morrison opposed sending the specimens to Dr. Shimada. Dr. Grand'Maison replied,

> [This type of cancer] is not a sarcoma, is treated very differently than . . . sarcoma with different prognosis which can be unfavorable particularly in adults if appropriate treatment is not delivered.

212. Dr. Twist weighed in to say,

> **If this tumor is in fact [of this type] . . . then unfortunately the patient did not receive the appropriate therapy up front**. **Any adjustment to therapeutic or salvage strategy depends critically on confirming the correct pathologic diagnosis** . . . **It is certainly in the patient's best interest and I believe the standard of care to obtain a 2nd pathologic opinion in a situation like this**.

(Emphasis added).

213. Dr. Morrison remained unmoved and, in the end, Dr. Grand'Maison was compelled to appeal to Dr. Chatta who successfully advocated with Dr. LeVea to have the specimens sent out.

214. In early 2021, Patient No. 6's mother reached out to the patient advocate program at Roswell. She was very upset that the patient had been misdiagnosed.

215. Courtney Kelchlin (Roswell's Senior Patient Advocate) emailed Drs. Grand'Maison and Twist, Dr. Anthony Picone (Thoracic Surgeon) and Dr. Lindsay Lipinski (Neurosurgeon), all of whom participated in caring for Patient No. 6, and asked if any of them would be willing to answer questions from the patient's family at a meeting organized by Dr. Kuvshinoff, including about how the patient was misdiagnosed, if the patient would have received the same treatment had the correct diagnosed been made and the patient's prognosis.

216. Dr. Grand'Maison agreed that a meeting with the family was appropriate but

asked that the pathologists Drs. Morrison, Sule and Kuvshinoff be included, as well.

217. Dr. Grand'Maison later emailed Dr. Kuvshinoff and Amy Dunn Kirkpatrick (Assistant Vice President and Deputy General Counsel) after she and several other doctors met to prepare for an upcoming meeting with Patient No. 6's family. Neither Dr. Morrison nor Dr. Sule attended the prep session.

218. Dr. Grand'Maison, aghast that the pathologists responsible for the misdiagnosis were not at the prep meeting, wrote:

> It is clear that **it becomes very difficult for me to work safely at Roswell Park without mentioning the hostile environment I am working in** as you can read below in an email sent to me by [Dr. Morrison] last September.[31] As you well know, this is nothing new as the tone was set the first day I arrived at Roswell Park. "I am not allowed to think, discuss, ask questions about cases at sarcoma tumor board using my expertise." I am neither allowed to ask for an outside pathology review for difficult cases like [Patient No. 6] . . . Unfortunately, or fortunately for the patients, I will never change the way I think and work as it is solely for the benefit of the patients. Sarcoma is complexed [sic], I know the disease and how crucial it is to have the right diagnosis from the start. The only thing I am asking is to work as a team, with collegiality but I am clearly not welcome in this team, never have been and there is no desire from the team members to change. **This inappropriate attitude is putting patients and my practice at risk, which I cannot accept anymore.** What am I going to say to [Patient No. 6's] family? That I simply work with the diagnosis the pathologist is providing me with. There is no other answer.

(Emphasis added).

219. Dr. Grand'Maison later learned that Patient No. 6 had died.

[31] Dr. Grand'Maison is referring here to the email Dr. Morrison sent to her on September 14, 2020 in which he threatened to go to HR if she did not stop bringing what he called "challenges" to his case presentations.

220. These and the other cases raised by Dr. Grand'Maison demonstrate the real need for Roswell to listen to Dr. Grand'Maison's concerns and not push her to the side for raising concerns about a senior doctor's diagnostic competence and lack of concern for patient safety.

221. Dr. Grand'Maison brought her concerns directly to Dr. Brentjens expecting that at long last the patient safety risks she had previously complained about would be addressed and the retaliatory behaviors stopped. However, as the next few days would bear out, the conversation with Dr. Brentjens would lead directly to her ouster.

222. On March 9, 2022, two days after the meeting with Dr. Brentjens, the Mentoring Committee met for the third time.

223. The meeting began with a 45-minute discussion of Dr. Grand'Maison's research progress, which the Committee agreed was going exceedingly well. The meeting then took an abrupt turn.

224. Dr. Brentjens's tone changed completely, becoming very somber, and he said that the interactions between Dr. Grand'Maison and Drs. Morrison and Kane were not improving and that they did not want to work with her anymore.

225. Dr. Grand'Maison, reiterating what she told Dr. Brentjens in their one-on-one conversation just two days prior, stated that she had a good reason for requesting second opinions because of the multiple cases Dr. Morrison had misdiagnosed. She said,

> **What can I do to improve the relationship? I can't treat patients without a diagnosis or a diagnosis I believe is wrong. I don't have the tools I need. This is about patient safety.**

226. Dr. Bonaccio then asked Dr. Brentjens if Roswell had been able to find another sarcoma medical oncologist and he said, "No, we didn't find anybody as nobody wants to work

here." He then abruptly ended the meeting, leaving Dr. Grand'Maison with the impression that she was going to be fired for speaking up about patient safety.

227. Following the meeting, Dr. Grand'Maison spoke with Dr. Ohm, who confirmed her fear that she was going to be terminated by stating, "I have been listening and observing what has been going on. From my experience, if there is one person of the three of you who will be made to leave, it is you."

228. The next day, Dr. Grand'Maison emailed Dr. Ohm to say the retaliation against her had become worse but added, "I am not ready to go, unless they fire me."

229. Unbeknownst to Dr. Grand'Maison, Patient No. 1 emailed Dr. Kuvshinoff around this time to complain that Dr. Morrison had misdiagnosed the patient and was now refusing to send the patient's pathology out for a second opinion.

230. A brief history of Patient No. 1 is necessary here. The patient was well known to Roswell and was first treated there for cancer in 2005.

231. So positive was the patient's experience with that cancer team that the patient became a public champion for the hospital.

232. In 2017, Patient No. 1 learned they had a large tumor. The patient's oncologist at Roswell told the patient that the tumor was not the same type of cancer she had before but a form of sarcoma.

233. He referred Patient No. 1 to the sarcoma team where Drs. Kane and Grand'Maison took over the care. Dr. Morrison's pathology report concluded that the tumor was carcinosarcoma, which is a mixture of carcinoma (cancer of tissue lining the internal organs) and sarcoma (cancer of connective tissue).

234. Patient No. 1 requested that a biopsy sample be sent for a second opinion to Dr. Christopher Fletcher at Dana Farber. After multiple requests, Dr. Grand'Maison was finally able to prevail upon Dr. Morrison to send a slide with the sample to Dr. Fletcher only to learn later that year that the sample Dr. Morrison sent was not big enough to test and that, in any event, the slide had been contaminated by a Roswell technician's fingerprints, which was an embarrassing breach of professional standards.

235. Dr. Fletcher asked that the entire tissue block be sent to him rather than just a slice of it on a slide so that he would have enough material on which to perform the test, but Dr. Morrison ignored the request.

236. Unable to wait any longer to start treatment, Patient No. 1 began receiving chemotherapy under Dr. Grand'Maison's care based on her presumed diagnosis of osteosarcoma, given the clinical presentation of the tumor and her observation that the tumor melted away in response to chemotherapy.

237. In early 2018, Dr. Kane performed surgery on Patient No. 1. Confident that the surgical sample was large enough to send out for a second opinion, Patient No. 1 took the advice of the patient's previous oncologist and Dr. Grand'Maison to send it to Dr. Antonescu at MSK so that a definitive diagnosis could be made and her treatment tailored accordingly.

238. It took months for Dr. Morrison to send the sample to Dr. Antonescu, delaying the start of Patient No. 1's post-surgical treatment.

239. Dr. Antonescu did not confirm Dr. Morrison's diagnosis but instead found that the tumor was "most consistent with a high grade radiation-induced sarcoma, possibly a high grade osteosaroma."

240. After concluding treatment, Patient No. 1 remained in good health until late 2021, when a cancerous mass was discovered in the same location as the previous tumor.

241. Dr. Kane operated on Patient No. 1 in early 2022. After the surgery, Dr. Morrison examined the surgical sample and diagnosed it as carcinosarcoma, the same cancer he had previously erroneously diagnosed in 2018.

242. Patient No. 1 asked Drs. Kane and Grand'Maison to send the surgical sample to MSK for a second opinion. But for more than a month, Dr. Morrison refused.

243. Patient No. 1 emailed Dr. Kuvshinoff to express anguish at Dr. Morrison's intransigence:

> How can one man, Dr. Carl Morrison, play with my life in this careless and callous fashion? Where and when did he decided that he is God over my life and the lives of my [spouse] and [] children? I have never experienced anything like this in my past with breast cancer. **It has only been since fighting sarcoma and having my life in the hands of Carl Morrison that I have ever had to fight the system.** What in the world does Roswell exist for? I thought it was to help patients and eradicate cancer? I have only ever had good things to say about Roswell but now I am saddened and angered that one man is able to obstruct my very clear wishes. The Patients [sic] Bill of Rights states; I have the right to "receive complete information about my diagnosis, treatment, and prognosis." It also states that I have the right "to participate in all decisions about my treatment." . . . **My Drs Kane and GrandMaison have been wonderful doctors throughout my treatment.** I have been able to live another five years, thanks to them. I should like to see my little children grow up. Cancer has taken so much from me, **please do not allow Dr. Morrison to take more years away that I could spend with my children and loved ones.**

(Emphasis added).

244. Two days later, a patient advocate from Roswell called Patient No. 1 to apologize that the sample had not been sent out for a second opinion and attempted to assuage the patient's concerns by saying that it was on its way to Dr. Fletcher at Dana Farber.

245. Patient No. 1 was flabbergasted that the sample did not go to Dr. Antonescu at MSK, who had made the previous diagnosis, consistent with the patient's request. Flummoxed by this embarrassing turn of events, the patient advocate called Dr. Grand'Maison to ask what could be done to make the situation right.

246. In the end, the sample had to be sent back to Roswell from Dana Farber and then back out again to MSK, which further increased the delay in diagnosis.

247. The day after Patient No. 1 emailed Dr. Kuvshinoff begging for his help to get Dr. Morrison to send the sample to MSK, Dr. Brentjens emailed Dr. Grand'Maison and said,

> Based on our conversation on Wednesday, it is critical that we investigate your assertions of misdiagnosed sarcoma samples by our pathologists . . . I request that you provide complete detailed documentation of these cases . . . in order to decide and proceed with a further investigation into this matter.

248. Dr. Brentjens asked that Dr. Grand'Maison provide the detailed information regarding the cases to him the following week. Dr. Grand'Maison began putting the materials together.

249. On March 15, 2022, Dr. Grand'Maison emailed Dr. Brentjens to say that she had put together a summary and supporting documents for 10 of the cases which an administrative assistant would deliver to him and that she would send the other cases within a few days.[32]

250. The next day, on March 16, 2022, completely out of nowhere, Susan Johnson sent Dr. Grand'Maison an email (cc'ing Dr. Brentjens) and attached a letter that stated, "[t]his letter confirms acceptance of the notice of resignation that you provided by email to the Clinical Practice Plan, on January 3, 2022 . . . effective on May 1, 2022."

[32] Due to a clerical error, the 10 cases were not delivered to Dr. Brentjens until March 17.

VI. Roswell Refuses to Rescind the Supposed Resignation, Firing Dr. Grand'Maison

251. Dr. Grand'Maison was completely confused because she had never submitted any resignation letter. She asked Ms. Johnson to forward the purported resignation letter to her.

252. Ms. Johnson's reply attached the January 4, 2022 email that Dr. Grand'Maison had sent to Ms. Rokitka almost two and a half months earlier (referenced above), to which there had never been any response or dialogue.

253. Dr. Grand'Maison responded immediately, "This is about my husband not me and this is not a resignation letter as you well know." Ms. Johnson replied that the January 4, 2022 email constituted a resignation.

254. Coming just days after extensively documenting serious patient safety concerns, it was clear that the January 4th email was a pretext to get rid of her.

255. After all, Roswell had confirmed the very day she sent the January 4th email that her husband had no intention to move back to Canada any time soon. And again, there had been no communication with her about any purported resignation since then for more than two months until just after she raised her complaint.

256. The email could not constitute a resignation as it did not comport with Roswell's Separation from Service Policy No. 206.1, which requires resigning employees to provide notice of their resignation by informing their supervisor of their intended separation and complete the "resign" process in Workday, Roswell's human resources software—none of which Dr. Grand'Maison had done or been asked to do by anyone in HR.

257. In addition, per policy, if the employee does not complete the process in Workday (which Dr. Grand'Maison did not), the employee's supervisor must initiate the process.

258. Surely if anyone in Dr. Grand'Maison's supervisory chain—from Dr. Chatta up through Dr. Brentjens—thought that she had resigned, they would have acknowledged it to her, yet no one at Roswell told her they interpreted her January 4th email as a resignation until days after bringing her concerns about patient safety to Dr. Brentjens.

259. Furthermore, Ms. Johnson's assertion the hospital had treated the January 4th email as a resignation did not compute because there would have been no reason for the Mentoring Committee to meet to assess her performance improvements if Dr. Grand'Maison had resigned and yet she met with the committee twice after January 4, the second meeting being only one week before Ms. Johnson emailed her about a "resignation."

260. In addition, throughout this period Dr. Grand'Maison served on Roswell's Credentialing Committee which is regularly notified of physician resignations *via* lists distributed to Credentialing Committee members. At no time did Dr. Grand'Maison appear on any of those lists, nor did any member of the Committee acknowledge to Dr. Grand'Maison that they had been notified that she had resigned or would otherwise be leaving Roswell.

261. Furthermore, Dr. Brahm Segal (at the time responsible for, *inter alia*, professional career development at Roswell Park) met with CEO Dr. Candace Johnson in February 2022 to discuss an important project and related grant proposal developed by Dr. Grand'Maison. At no time during the meeting did Dr. Johnson mentioned that Dr. Grand'Maison had resigned. In fact, Dr. Segal expressed surprise when Dr. Grand'Maison told him in April 2022 that she was leaving Roswell Park.

262. On March 27, 2022, Dr. Grand'Maison emailed Susan Johnson, determined to put to rest any confusion about whether she intended to resign with the January 4th email. She wrote,

> This is to confirm that, as per our email exchange on March 16th, I have not resigned from Roswell. Roswell only took the position that my January 4th email was a resignation immediately after **I raised very serious patient safety concerns involving Dr. Morrison** earlier in March. **This is clearly retaliation** and an attempt to force me out which is completely improper. The conduct at issue, including the retaliation against me, violates hospital policy.

(Emphasis added).

263. Despite the fact that Roswell's anti-retaliation policy directs employees to bring complaints concerning wrongdoing to the Employee and Labor Relations Office headed up by Ms. Johnson, she completely ignored the fact that Dr. Grand'Maison's email raised a complaint of retaliation and merely directed her to submit a request in writing to Dr. Douglas if she wished to rescind her "resignation."

264. Dr. Grand'Maison reiterated that she was being forced out in retaliation for raising patient concerns:

> As mentioned in my last email, I did not resign through my January 4th email. **No one from the hospital acknowledged that email at all let alone interpreted it as a resignation until after I raised patient safety concerns two months later**. Moreover, as the hospital knows, my husband is not leaving the hospital so it wouldn't make sense to assume I'm resigning based on that email. Again, **this all shows that this is just an attempt to force me out.** If you think this needs to go through Errol Douglas, feel free to forward him my correspondence.

(Emphasis added).

265. On March 30, 2022, Ms. Johnson again turned a blind eye to Dr. Grand'Maison's complaints and responded instead, "I have responded to you several times. The facts haven't changed. Your resignation was received and accepted."

266. She did not address Dr. Grand'Maison's retaliation or patient safety complaints at all.

267. On March 31, 2022, Dr. Grand'Maison emailed Dr. Candace Johnson to request that what had been mistaken for a resignation be rescinded and made plain that she thought her January 4th email was being used a pretext to push her out in retaliation for forcing the issue with Dr. Brentjens of the risk to patient safety caused by Dr. Morrison:

> I have been communicating with Susan Johnson in HR about an issue and she has refused to help which is why I am emailing you in compliance with hospital policy.[33] On January 4, I emailed the credentialing office that my husband might be leaving the hospital in May to move to Canada and I would be moving with him. The credentialing office then reached out and got in touch with my husband who confirmed that he was not leaving Roswell and cleared up any confusion. That was the end of the situation, or so I thought. In early March of this year, **I raised numerous concerns with Dr. Renier Brentjens about extremely serious improper and unsafe patient care involving Dr. Carl Morrison**. Within days of submitting those issues, I was told that my "resignation" from January 4, of which there had been no communication about since that day, was accepted and that I was forced to leave the hospital by May 1. **This seemed like completely blatant retaliation**. I since asked Ms. Johnson to undo what had been misinterpreted as a resignation, but she has refused to process my request or even forward it to someone who can handle it. I have reviewed policy 206.1 and it says this request must go through you. It is not my intention to bother the President of the hospital with this, but HR does not seem willing to help and I am just following the policy. I would appreciate your attention to this

[33] Roswell policy provides that a request to rescind a resignation is made by the President and CEO or her designee.

> matter. **It is completely improper and unlawful for me to be retaliated against for blowing the whistle on improper patient care.**

(Emphasis added).

268. One would expect Dr. Johnson, as the highest-ranking executive at Roswell, to take seriously Dr. Grand'Maison's complaints that Dr. Morrison was involved with improper and unsafe patient care and that she was being retaliated against in violation of Roswell policy.

269. Shockingly, Dr. Johnson did not acknowledge either complaint in her reply, much less assure Dr. Grand'Maison that such complaints were taken seriously and would be investigated as such.

270. So complete was Roswell's commitment to silencing Dr. Grand'Maison, protecting Dr. Morrison and sweeping the patient safety concerns under the rug that Dr. Johnson merely stated curtly, "This issue has been delegated to Errol Douglas . . . ." (Ellipses in original).

271. Whether Dr. Grand'Maison's January 4th email constituted a resignation or not, there should have been no legitimate reason to deny her request to rescind.

272. Roswell had not yet hired anyone else to replace her and Dr. Grand'Maison had good reason to believe that the January 4th email was not being acted upon given the emails between Ms. Rokitka and her husband on the very same day, in addition to the complete lack of communication about it in the 10 weeks that followed.

273. The only reason for Roswell not to rescind the resignation would be if Roswell simply did not want Dr. Grand'Maison to be there any longer—and figured it could use the opportunity to get rid of a whistleblower.

274. On April 1, 2022, Dr. Grand'Maison began corresponding with Dr. Douglas about her request to rescind what had been misinterpreted as a resignation. She wrote to Dr. Douglas in a series of emails:

> I can't imagine what the possible basis would be not to exercise your discretion in a situation like this . . . . [I]t was not my intention to resign through my January 4th email to the credentialing office. No one from the hospital acknowledged that email at all, let along interpreted it as a resignation, until after **I raised patient safety concerns in a meeting with Dr. Brentjens** more than two months later. Within two days of providing him with documentation of my concerns, I received an email from Susan "accepting" my resignation. I had no idea what she was talking about as I did not even recall sending the email on January 4th. Moreover, my husband confirmed with Denise McIntyre on January 4th that he was not leaving the hospital so it wouldn't make any sense for Roswell to assume I was resigning based on that email. Also, as you are aware, Roswell policy is that employees must notify their supervisors of their resignation. I never told my supervisor that I was resigning or even that there was a possibility I might have to leave Roswell because of my husband's plans.[34] . . . . I would like the opportunity to respond to any information you are going to consider in making a decision because **I am concerned about retaliation for raising patient safety concerns** . . . .

(Emphasis in original).

275. Any hope Dr. Grand'Maison had that she would not be forced out in retaliation for speaking up was dimmed by Dr. Douglas's sharp response:

> I do not have all of the information yet and **you continuing to mention retaliation is not going to sway the decision**, because I will review the documentation of what you have submitted and the timelines. **Saying something does not equal facts.**

(Emphasis added).

[34] In fact, Dr. Grand'Maison was committed to staying in Buffalo because she had already put down a significant deposit on private school tuition for her two teenaged daughters for the 2022-2023 school year.

276. Dr. Grand'Maison also made the entirely reasonable request—given Dr. Douglas's representation that he would be collecting information from others in consideration of her request—that she be allowed to respond to any information provided by Drs. Brentjens and Bonaccio, the only two people Dr. Douglas said he would speak with in making his decision.

277. If in fact the rescission process was legitimate, there would be no reason not to provide Dr. Grand'Maison with that opportunity. That the decision not to rescind was preordained is evident in Dr. Douglas's response: "I will not consult with you regarding the decision that I need to make."

278. At the same time Dr. Grand'Maison was fighting her forced resignation, she continued to communicate with Dr. Brentjens about Dr. Morrison's medical misconduct.

279. On April 4, 2022, Dr. Grand'Maison delivered to Dr. Brentjens's office medical records for nine additional cases and a summary of her concerns regarding pathology errors, delays or an absence of diagnosis in those cases.

280. Less than 48 hours later, Dr. Douglas emailed Dr. Grand'Maison that he was denying her request to rescind the "resignation."

281. He stated that the denial was based on the extension of her probation for "lack of collegial relationships w physicians/colleagues and staff" and the Mentoring Committee's feedback that the relationships had become worse and were untenable.

282. In other words, the fact that Dr. Morrison had ramped up his retaliation against Dr. Grand'Maison after the creation of the Mentoring Committee was being used as an excuse to push her out.

283. Dr. Douglas also shared that unnamed Roswell employees discussed the "direction of this mentoring engagement" on February 15, 2022 to see if there had been any progress and the outcome of meeting was to terminate her.

284. He stated that Roswell did not follow through with termination because it learned of Dr. Grand'Maison's resignation and decided that was "an acceptable way of ending the work relationship."

285. This last bit of news was particularly galling because, if true, it would mean that the Mentoring Committee had been a sham, since it continued to meet and "assess Dr. Grand'Maison's progress" long after the supposed decision to terminate her had been made.

286. In the end, it is clear that Roswell was desperate to cut Dr. Grand'Maison loose after she repeatedly raised concerns regarding patient safety and a hostile work environment created by Dr. Morrison and others.

287. Roswell, in an effort to protect itself and its senior personnel, even at the expense of patients, sought to forever silence Dr. Grand'Maison by removing her from the workplace.

VII. Roswell's History of Discriminatory and Retaliatory Conduct

288. Unfortunately, the discrimination and retaliation leveled against Dr. Grand'Maison is nothing new at Roswell.

289. Retaliation and intimidation against those who raise complaints appears to be woven into the fabric of Roswell's institutional culture. Numerous publicly filed lawsuits confirm this pattern of practice.

- ***Jane Zhou v. Roswell Park Cancer Institute, et al.***

290. In Zhou v. Roswell Park Cancer Institute, et al., 19 Civ. 01200 (LJV) (MWP) (W.D.N.Y.), Dr. Zhou, a pathologist (who also had a fellowship at MD Anderson before coming

to Roswell) made numerous allegations of misconduct, among them that a male pathologist "verbally attacked" her every time she expressed her professional opinion at Tumor Board and followed up with "attacking emails," indicating that Dr. Zhou "should keep her mouth shut." This doctor later stated he did not want her presenting cases at Tumor Board because she would disclose discrepancies in diagnoses—which was the whole point. Dr. Zhou then received a marginal rating on her evaluation for the stated reason that she did not have "collaborative working relationships" or engage in "prompt solutions to conflict," leading to her termination. She was fired three months after emailing Dr. Candace Johnson, Dr. Kuvshinoff and others about patient safety concerns related to how a doctor was performing a particular procedure—a complaint that to her knowledge was never even investigated. To say there are parallels between Dr. Zhou's case and Dr. Grand'Maison's would be an understatement.

- ***Willie Underwood, III, M.D. v. Roswell Park Cancer Institute, et al.***

291. Much like Dr. Grand'Maison, in Willie Underwood, III, M.D. v. Roswell Park Cancer Institute and Dr. James Mohler, 15 Civ. 00684 (FPG) (W.D.N.Y.), Dr. Underwood was a long-time and established physican at Roswell when his employment came undone after he raised complaints of both discrimination and patient safety concerns. The scope of the unlawful conduct perpetrated against Dr. Underwood is nearly impossible to summarize briefly, but suffice it to say the conduct was extreme and outrageous.

292. For instance, in 2012, Dr. Underwood, a urologist, complained about Roswell's failure to accurately report patient deaths and related complications, as well as improper surgical practices that led to a patient death at the hands of Dr. Mohler. When he did so, a senior doctor told him, "If you file a complaint outside the organization, it's going to have ramifications not only for the person you file the complaint against, but for you and the institution. You have to

know that." Thereafter, Dr. Underwood was marginalized and had his schedule interfered with which also impacted his ability to see patients and provide the best possible patient care. Dr. Underwood complained about this conduct, and he was abruptly exiled from the Urology Department offices—a blatant act of further retaliation.

293. In 2013, Dr. Underwood continued to raise his concerns about patient safety and called for an external review of these improper practices. Dr. Mohler firmly resisted and opposed the idea, saying, "I just worry about our national reputation, which is good, whether this is a wise thing to do . . . we don't need a bunch of people to look at something and say it is not right." Thus, Dr. Mohler directly put Roswell's and his own reputation at a higher priority level than patient safety and best practices. Thereafter, Dr. Underwood continued to raise these concerns until, finally, Roswell revoked Dr. Underwood's—not Dr. Mohler's—staff privileges.

294. This conduct persisted in 2014, and after several additional complaints about Dr. Mohler and Roswell's practices, Dr. Underwood filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). Just days after the EEOC complaint was filed, Roswell informed Dr. Underwood that he was prohibited from performing clinical work. Only weeks later, Roswell informed Dr. Underwood that he was being removed from his position, forced to take a leave of absence against his will and that his staff privileges would remain revoked.

295. So obstinate was Roswell in refusing to handle Dr. Underwood's complaints appropriately and professionally, and so committed was Roswell to protecting Dr. Mohler—who had been at the center of several lawsuits involving a variety of misconduct—that Dr. Underwood was forced to file a federal lawsuit to seek remediation for this conduct. Incredibly, Dr. Mohler, for all the evidence of his misconduct towards patients and employees/doctors, remains employed in a senior capacity at Roswell to this day. Dr. Underwood's case is

emblematic of Roswell's placement of its own interests above those of patients, willingness to protect its senior doctors in the face of clear misconduct, and acquiescence to and direct support for vindictive and retaliatory conduct against those who raise complaints against the hospital.

- ***A.L.A Sulieman v. Roswell Park Cancer Institute, et al.***

296. In Sulieman v. Roswell Park Cancer Center Institute, et al., 05 Civ. 00766 (WMS) (LGF) (W.D.N.Y.), Dr. Sulieman alleged that Dr. Mohler (involved in other cases referenced herein) committed malpractice. Specifically, as a 12-hour surgery was ending, Dr. Sulieman alerted Dr. Mohler that there was a lot of blood in the patient's drain, but Dr. Mohler insisted it was irrigation fluid. Dr. Sulieman was later proven correct, and the patient had to be operated on again for four more hours to control the bleeding. Furthermore, Dr. Mohler did not follow Dr. Sulieman's advice on how to stop the bleeding, which led to more prolonged surgery.

297. In a Morbidity and Mortality Conference, Dr. Mohler hid information about the case and changed his story when asked by others about why he did not stop the bleeding using the technique Dr. Sulieman had suggested. Dr. Sulieman alleged that Dr. Mohler changed Dr. Sulieman's patient notes, asked Dr. Sulieman to falsify notes (which he refused to do) and that Dr. Mohler falsified information used during a lecture on robotic surgery. Dr. Sulieman also observed that Dr. Mohler had a tremor when operating.

298. After Dr. Sulieman reported Dr. Mohler's conduct, Dr. Mohler retaliated by forcing Dr. Sulieman to take 21 days of unpaid leave to fly out of state for one day to attend a child custody hearing rather than allow him to take the day off, asking him to take an indefinite leave of absence and, when he refused, telling Dr. Sulieman to resign. Dr. Sulieman complained to Dr. Mohler's supervisor about this, and he was further retaliated against, including having his employment terminated.

299. This is yet another example of Roswell backing a senior doctor in the face of massive evidence of misconduct and green lighting retaliation against a whistleblower. Moreover, apparently forcing doctors who raise complaints to "resign" is part of Roswell's *modus operandi* utilized against several employees who were viewed as somehow "problematic."

- ***Terry Kearney v. Roswell Park Cancer Institute, et al.***

300. In Kearney v. Roswell Park Cancer Institute, et al., 17 Civ. 00627 (CCR) (W.D.N.Y.), a nurse alleged, *inter alia*, that she was retaliated against by being placed on paid and then unpaid leave for bringing discrimination and patient safety complaints to her supervisor and to HR. Like Dr. Grand'Maison's complaints, Ms. Kearney's complaints fell on deaf ears, even though patient safety was directly at issue. After she complained, Ms. Kearney's supervisor said he would look into her complaints and follow up with her, but she never heard back from him, just as Dr. Brentjens never followed up with Dr. Grand'Maison after she provided him with evidence of the 19 misdiagnosed cases. Furthermore, the person Ms. Kearney observed engaging in dangerous patient care was nominated for an award after Ms. Kearney made her complaint, much like Dr. Morrison was twice promoted even as Dr. Grand'Maison raised numerous complaints that he was putting patient safety at risk. The facts of Kearney demonstrate a clear pattern of practice and *modus operandi* at Roswell.

- ***Elena Pop v. Roswell Park Cancer Center, et al.***

301. The pattern of gender discrimination by male doctors towards female doctors and retaliation for speaking up about it was directly at issue in Elena Pop v. Roswell Park Cancer Center, et al., 19 Civ. 00561 (WMS) (MJR) (W.D.N.Y.). In Pop, two male doctors were on record and recorded making horribly offensive comments to a female doctor who was a mother

with young twins. These comments included numerous statements that being a mother of twins would make her a less productive doctor, calling her "emotional" for disagreeing with them, and saying that her husband should be involved in discussions about her role at Roswell. When Ms. Pop complained about this conduct, she was abruptly terminated after seven years of employment as part of a so-called restructuring—even though just before she raised her complaints she was told she could remain at Roswell for at least five more years. Pop shows, yet again, that retaliation is part of the fabric at Roswell and that those who "dare" raise complaints are targeted for mistreatment.

- ***Xantipple Conerly v. Roswell Park Cancer Institute, et al.***

302. In Xantipple Conerly v. Roswell Park Cancer Institute, et al., 19 Civ. 00628 (WMS) (LGF) (W.D.N.Y.), the plaintiff was repeatedly retaliated against after raising legitimate complaints of discrimination to HR. These complaints, like Dr. Grand'Maison's, were never treated with care or due diligence; rather, immediately after Ms. Conerly raised her complaints she was subjected to an array of retaliatory conduct by the perpetrators of the discrimination. That is, clearly they were told about her complaints and not given the necessary or appropriate direction to cease engaging in retaliatory conduct. To the contrary, Roswell's HR was complicit in the retaliation, including telling one of Ms. Conerly's colleagues that she was "blacklisted" for raising complaints and that there was an "ongoing effort to get rid of her." The facts of this case, and the parallel to Dr. Grand'Maison's experience and the culture at Roswell, speak for themselves.

* * *

303. In sum, Roswell has a long, sordid, and documented history of retaliation against doctors and other employees for having the gall to raise complaints of discrimination and, even more disturbing, for blowing the whistle on patient safety misconduct.

304. Considering Roswell's past practices, it is unfortunately not surprising that Dr. Grand'Maison was swiftly forced out under the guise of a resignation that could not be rescinded after she documented complaints regarding patient safety.

305. Not only is it not surprising, it is completely consistent with what appears to be Roswell's long-standing standard operating procedures—procedures that Roswell steadfastly refuses to remedy despite numerous lawsuits, likely many other complaints resolved without a public record and what is surely millions of dollars in private and undisclosed settlements.

306. Of all the comments Dr. Grand'Maison's colleagues made to console her as she practiced under the weight of discrimination and retaliation, those offered by one physician in the fall of 2021 rang particularly true:

> Anne, everyone knows you are a victim of your expertise. And you are a victim because you are a woman. Carl Morrison does not deal easily with women.

307. This physician's advice was that Dr. Grand'Maison "keep a low profile" and not ask too many questions at the Tumor Board.

308. In the end, Dr. Grand'Maison refused to remain silent because the health of her patients and many other Roswell patients was at stake. Being forced out was the price she paid.

VIII. Equal Pay Violations

309. Given Roswell's acquiescence to a male-dominated environment where Dr. Grand'Maison and numerous other women have alleged mistreatment, misogyny and sexism

running rampant at Roswell, it is unfortunately not surprising that women are paid less than similarly situated male colleagues.

310. Upon information and belief, Dr. Grand'Maison was dramatically underpaid relative to her male peers who had similar roles and/or responsibilities.

311. In 2019, Dr. Grand'Maison raised concerns that her compensation was unreasonably low and less than that of her male peers. In response, Dr. Ernstoff at Roswell confirmed to her that she was "underpaid", increased her base salary and gave her a $50,000 one-time bonus.

312. This confirmed that Dr. Grand'Maison was, in fact, underpaid relative to her male colleagues. However, even with the raise and bonus, Dr. Grand'Maison remained in an underpaid position even for 2019 as compared to similarly situated male peers, and she continued to be underpaid going forward thereafter.

313. For instance, but only by way of an example, Dr. Grand'Maison remained substantially underpaid as compared to Dr. Jens Hillengass, a Myeloma Oncologist. Dr. Grand'Maison's salary was approximately $260,000, while Dr. Hillengass's salary was approximately $360,000. Dr. Grand'Maison and Dr. Hillengass had reasonably comparable roles, skill and experience.

314. Upon information and belief, Roswell's decision to pay significantly more compensation to male doctors than to Dr. Grand'Maison is not based on a *bona fide* factor other than or unrelated to gender.

315. Nor is Dr. Grand'Maison the first Roswell doctor to raise claims of equal pay violations. Dr. Jane Zhou alleged that she was paid $75,000 less than a male colleague with similar skill and experience. Ms. Zhou also alleged that other male candidates were offered

higher salaries than other female candidates in the hiring process. See Zhou v. Roswell Park Cancer Institute, et al., 19 Civ. 01200 (LJV) (MWP) (W.D.N.Y.) at Dkt. No. 45.

316. Institutionally, male doctors at Roswell dominate the highest paying positions. According to publicly reported salary data,[35] the top eight highest paid doctors at Roswell are all men.

317. Moreover, out of the top 24 highest paid doctors at Roswell, only one is a woman. Only three of the top 35 highest paid doctors are women. Only six of the top 50 highest paid doctors are women. There only appears to be some level of parity in representation at lower salary levels.

318. As an overall average across Roswell, female doctors are paid a base salary of approximately $300,000 as compared to male doctors earning a base salary of approximately $400,000. This is completely in line with published reports that female doctors make 25% less than men across the medical industry.[36]

IX. Roswell Is Not Exempt From Punitive Damages

319. Roswell is a public entity corporation as statutorily designated by N.Y. Pub. Auth. Law § 3553.1(a) ("There is hereby created a corporation to be known as the Roswell Park Cancer Institute Corporation which shall be a body corporate and politic constituting a public corporation."). See N.Y. Const. art. X, § 5.

320. As interpreted by New York courts, the phrase "body corporate and politic" refers to a wide variety of entities and standing alone does not designate a public entity corporation as an alter ego or arm of the state.

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35 See https://seethroughny.net/.

36 See https://www.nytimes.com/2021/12/06/health/women-doctors-salary-pay-gap.html.

321. Officers and employees of Roswell are "deemed public officers or public employees, as the case may be, in the [New York State] civil service," as set forth in N.Y. Pub. Auth. Law § 3557.1, and "entitled to all the rights thereto as if such employee was a state employee subject to the pertinent provisions of the civil service law." N.Y. Pub. Auth. Law § 3557.5.

322. Under New York General Construction Law ("N.Y. Gen. Constr. Law"), § 65(b), a "public corporation" is defined as either a "municipal corporation," a "district corporation," or a "public benefit corporation," but the Legislature has not defined Roswell as a "municipal corporation," which includes "a county, city, town, village and school district," see N.Y. Gen. Constr. Law § 66(2), or a "district corporation" which includes "any territorial division of the state . . . whether or not such territorial division is expressly declared to be a body corporate and politic." § 66(3).

323. Roswell is self-funded and, with the exception of the appointment of Roswell's directors by the governor and other state officials, is not under significant state control.[37]

324. Importantly, New York is not liable for payment of any Roswell bonds or notes, see N.Y. Pub. Auth. Law § 3562, or budget deficits, and no New York statute indicates Roswell is structured in any other way than to be self-sustaining. N.Y. Pub. Auth. Law §3554 (10)-(13).

325. Nor does any provision of state law make the state responsible for debts or other liabilities, such as judgments or budget deficits, incurred by Roswell Park either directly or indirectly.[38]

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[37] Elected NY officials appoint voting directors of Roswell Park, and the governor appoints the chair of the board. N.Y. Pub. Auth. Law § 3553(1)(b), (3)(b).

[38] On an annual basis, Roswell Park must submit an annual reporting of its operations and quarterly reports of its fiscal condition to certain state officials, including the comptroller. N.Y. Pub. Auth. Law § 3568(4)-(5).

326. Although Roswell is intended to benefit the people of the state of New York, its status as a public entity corporation does not, as a matter of federal law, designate it as an "alter ego" or "arm of the state" of New York for purposes of immunity.

327. The operation and management of a cancer research facility and hospital, such as Roswell, is not an exclusive function of state or local government. Nor is it traditionally a function performed by a state or local government.

328. Roswell shares the field with hundreds of other private health and cancer research institutions that similarly receive funding through federal and state providers, including Medicaid or Medicare.

329. In the same way that private hospitals and cancer research companies operate, Roswell makes independent decisions about its employees, and admission and treatment of patients.

330. Roswell further executes its own contracts, leases and other agreements, and is served by its own separate legal counsel and department.

331. Roswell does not perform a unique government function that merits its exemption from the anti-discrimination and whistleblower laws. Like its counterparts in the private sector, Roswell must be held to the provisions of the laws in their entirety.

332. Although Roswell's directors and the chairperson of the board of directors are appointed by New York elected officials, their terms are defined for four to five years and once appointed, state lawmakers have no statutory right to oversight of board actions, Roswell's management, much less authority over day-to-day activities or planning and operations.

333. For purposes of the claims asserted by Dr. Grand'Maison, Roswell is not a state agency and is not covered as an arm of the state under the particular statutes at issue. Because

New York is not responsible for judgments against Roswell, if punitive damages are awarded in this action, taxpayers would not bear the costs.

334. The New York legislature can exempt Roswell from liability under any of the laws applicable here, yet it has not done so.

335. Having taken advantage of the benefits afforded to public entity status, Roswell is not entitled, absent express statutory authority, to take advantage of statutory exemptions intended to benefit entities offering essential services that traditionally fall under the auspices of the government.

FIRST CAUSE OF ACTION
(Equal Pay Act of 1963, 29 U.S.C. 206(d))
Against Roswell

336. 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.

337. During Plaintiff's employment, Roswell required Plaintiff to perform the same or substantially the same job position as other male employees, requiring equal skill, effort and responsibility under similar working conditions, and paid Plaintiff at a rate of pay less than such male employees.

338. Roswell engaged in patterns, practices and/or policies of employment which discriminated against Plaintiff on the basis of her gender by paying Plaintiff a lesser rate of pay than that paid to male employees performing the same or substantially similar job duties which require equal skill, effort and responsibility, and under the same working conditions.

339. As a direct and proximate result of Roswell's unlawful and discriminatory conduct in violation of the EPA, Plaintiff has suffered, and continues to suffer, harm for which

she is entitled to an award of monetary damages and other relief. Plaintiff is further entitled to an award of liquidated damages, reasonable costs and attorneys' fees.

SECOND CAUSE OF ACTION
(New York Equal Pay Act, New York Labor Law § 194)
Against Roswell

340. 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.

341. During Plaintiff's employment, Roswell required Plaintiff to perform the same or substantially the same job position as other male employees, requiring equal skill, effort and responsibility under similar working conditions, and paid Plaintiff at a rate of pay less than such male employees.

342. Roswell engaged in patterns, practices and/or policies of employment which discriminated against Plaintiff on the basis of her gender by paying Plaintiff a lesser rate of pay than that paid to male employees performing the same or substantially similar job duties which require equal skill, effort and responsibility, and under the same working conditions.

343. As a direct and proximate result of Roswell's unlawful and discriminatory conduct in violation of the EPA, Plaintiff has suffered, and continues to suffer, harm for which she is entitled to an award of monetary damages and other relief. Plaintiff is further entitled to an award of liquidated damages, reasonable costs and attorneys' fees.

THIRD CAUSE OF ACTION
(Unlawful Retaliation Under New York Labor Law § 740, *et seq.*)
Against All Defendants

344. 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.

345. New York Labor Law § 740 provides, "An employer shall not take any retaliatory action against an employee . . . because such employee . . . discloses, or threatens to disclose to a supervisor . . . an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety . . . or [] objects to, or refuses to participate in any such activity, policy or practice."

346. By the conduct described above, in response to Plaintiff's protected complaints and/or reports, Defendants subjected Plaintiff to a hostile work environment and the adverse employment actions set forth above.

347. The individual Defendants actively participated in and/or aided and abetted the unlawful conduct described herein.

348. As a result of Defendants' conduct, Plaintiff has suffered economic and non-economic injury for which she is entitled to monetary and other damages in an amount to be determined at trial, together with an award of punitive damages in an amount to be determined at trial, and any and all other available relief including attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Unlawful Retaliation Under New York Labor Law § 741, *et seq.*)
Against All Defendants

349. 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.

350. New York Labor Law § 741 provides that "no employer shall take retaliatory action against any employee because the employee . . . discloses or threatens to disclose to a supervisor . . . an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of

workplace safety . . . or [] objects to . . . any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety."

351. By the conduct described above, in response to Plaintiff's protected complaints and/or reports, Defendants subjected Plaintiff to a hostile work environment and the adverse employment actions set forth above.

352. The individual Defendants actively participated in and/or aided and abetted the unlawful conduct described herein.

353. As a result of Defendants' conduct, Plaintiff has suffered economic and non-economic injury for which she is entitled to monetary and other damages in an amount to be determined at trial, together with an award of punitive damages in an amount to be determined at trial, and any and all other available relief including attorneys' fees and costs.

FIFTH CAUSE OF ACTION
(Unlawful Retaliation Under New York Not-for-Profit Corporation Law § 715-b, *et seq.*)
Against All Defendants

354. 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.

355. New York Not-for-Profit Corporation Law § 715-b provides that every applicable organization have a policy confirming that "no director, officer, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence."

356. Roswell either does not have a policy compliant with §715-b or has a written policy that is compliant but does not follow such policy in practice. Furthermore, Roswell and its executives are on notice of and have acquiesced to non-compliance with such policy.

357. By the conduct described above, in response to Plaintiff's protected complaints and/or reports, Defendants subjected Plaintiff to a hostile work environment and the adverse employment actions set forth above.

358. The individual Defendants actively participated in and/or aided and abetted the unlawful conduct described herein.

359. As a result of Defendants' conduct, Plaintiff has suffered economic and non-economic injury for which she is entitled to monetary and other damages in an amount to be determined at trial, together with an award of punitive damages in an amount to be determined at trial, and any and all other available relief including attorneys' fees and costs.

SIXTH CAUSE OF ACTION
(Unlawful Discrimination and Retaliation Under New York State Human Rights Law § 290, *et seq.*)
Against All Defendants

360. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

361. The NYSHRL provides that, "It shall be an unlawful discriminatory practice . . . [f]or an employer . . . because of an individual's . . . sex . . . to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

362. By the conduct described above, Defendants subjected Plaintiff to a hostile work environment and adverse employment actions because of her gender in violation of the NYSHRL.

363. NYSHRL also provides that, "It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article."

364. By the conduct described above, in response to Plaintiff's protected complaints and/or reports, Defendants subjected Plaintiff to a hostile work environment, intimidation, harassment, discrimination and other retaliation, including but not limited to termination and/or failure rescind a supposed resignation.

365. The individual Defendants actively participated in and/or aided and abetted the unlawful conduct described herein.

366. As a result of Defendants' conduct, Plaintiff has suffered economic and non-economic injury for which she is entitled to monetary and other damages in an amount to be determined at trial, together with an award of punitive damages in an amount to be determined at trial, and any and all other available relief including attorneys' fees and costs.

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

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

368. Defendants were at all relevant times Plaintiff's employer.

369. By the actions described above, Plaintiff, reasonably and in good faith, made protected complaints under the NYLL, including complaints regarding a failure to provide protection to the lives, health and safety of patients and employees.

370. By the actions described above, Defendants retaliated against Plaintiff, in violation of N.Y. Lab. Law § 215, by unlawfully materially changing the conditions of her employment by, *inter alia*, subjecting her to a hostile work environment, intimidation, harassment and other retaliation, including but not limited to termination and/or failure rescind a supposed resignation.

371. As a direct and proximate result of Defendants' willful violations of the NYLL, and Defendants' unlawful and retaliatory conduct, Plaintiff has suffered and continues to suffer economic and emotional harm, for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses, liquidated damages and punitive damages.

EIGHTH CAUSE OF ACTION
(Unlawful Discrimination in Violation of Buffalo Administrative Code § 154-11)
Against All Defendants

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

373. The Buffalo Code provides that, "Any person who, with the intent to deprive an individual . . . of the exercise of their civil rights because of an individual's . . . sex . . . commits an unlawful discriminatory practice in violation of an individual's civil rights . . . shall be liable, in a civil action or proceeding maintained by such individual . . . ."

374. The Buffalo Code further states that such civil rights include "[a]pplying for or enjoying employment . . . ."

375. By the conduct described above, Defendants, because of Plaintiff's sex and in retaliation for Plaintiff's protected complaints, intentionally deprived Plaintiff of her civil right to enjoy employment, including but not limited to, subjecting Plaintiff to a hostile work

environment and the adverse employment actions set forth above.

376. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the Buffalo Code, Plaintiff has suffered, and continues to suffer, harm for which she is entitled to an award of monetary damages and other relief. Plaintiff is further entitled to reasonable costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against Defendants, containing 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 injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the policies and practices complained of herein;

C. An order directing Defendants to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated;

D. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages;

E. An award of damages against Defendants, or any jointly or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages;

F. An award of liquidated damages;

G. An award of punitive damages;

H. Prejudgment interest on all amounts due;

I. An award of costs that Plaintiff incurs in this action, as well as an award of reasonable attorneys' fees, costs and disbursements to the fullest extent permitted by law; and

J. 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: January 31, 2023
New York, New York

Respectfully submitted,

WIGDOR LLP

By: _____
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