

JUDGE CARTER

14 CV 8787

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Eliana Misas and Rhonda McIntosh,

Plaintiffs,

v.

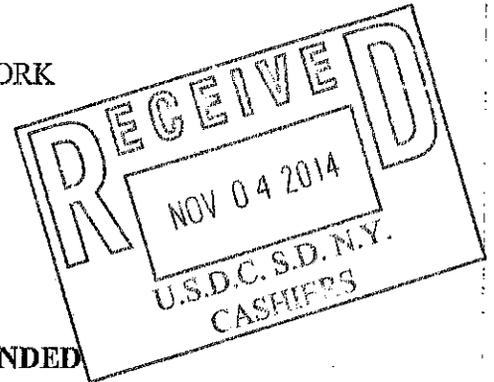
North Shore-Long Island Jewish Health  
System and Julio Cardoza,

Defendant.

Case No.

COMPLAINT

JURY TRIAL DEMANDED



Plaintiffs Eliana Misas (“Misas”) and Rhonda McIntosh (“McIntosh”) (collectively, “Plaintiffs”), by their attorneys, The Roth Law Firm, PLLC, hereby file this Complaint against Defendants North Shore-Long Island Jewish Health System (“North Shore-LIJ”) and Julio Cardoza (“Cardoza”) (collectively, “Defendants”) and states as follows:

THE PARTIES

1. Misas is an individual residing in Queens, New York.
2. McIntosh is an individual residing in Bronx, New York.
3. North Shore-LIJ is a health system with its headquarters located in Great Neck, New York. North-Shore LIJ owns multiple hospitals throughout Long Island and New York City, including Lenox Hill Hospital.
4. Upon information and belief, Cardoza is an individual residing in Queens, New York.

JURISDICTION AND VENUE

5. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e, *et seq.* (“Title VII”). Under 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the New York state law claims, as they are so related to claims which the Court has original

jurisdiction over that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in this District because Defendants conduct business in this District, and the acts and/or omissions giving rise to the claims herein alleged took place in this District.

### FACTS

7. North Shore-LIJ is a health system and a not-for-profit corporation duly formed and existing pursuant to the laws of the State of New York.

8. North Shore-LIJ owns multiple hospitals, including Lenox Hill Hospital ("Lenox Hill").

9. Misas was employed by Lenox Hill as an emergency room registrar from approximately March 2012 until approximately June 2013.

10. McIntosh was employed by Lenox Hill as an emergency room registrar from approximately August 2010 to date.

11. Cardoza was employed by Lenox Hill as a supervisor of the emergency room registration department from approximately the beginning of 2011 to approximately November 2013.

12. During their employment by Lenox Hill, Misas and McIntosh were subjected to harassment, discrimination, a hostile work environment and retaliation.

### Sexual Harassment

13. In or about July 2012, Misas was called into the office of her supervisor Omar Edwards ("Edwards").

14. During the meeting in or about July 2012, Edwards made comments to Misas about a blouse she had worn previously, asking her to wear it more often, while making hand motions on his chest.

15. Edwards told Misas, "Your breasts are beautiful. You are beautiful. I'm very protective of my staff."

16. Misas left Edwards's office feeling violated and disgusted.

17. Less than one week later, Misas and McIntosh were called into Edwards's office by another supervisor, Julio Cardoza ("Cardoza"). Cardoza called Misas and McIntosh into the office to show them the pornographic photographs Edwards had downloaded onto the computer provided to him by Lenox Hill.

18. While in the office, Misas took pictures of the pornography with McIntosh's cell phone in order to document the event.

19. Immediately after seeing the pornography, Misas and McIntosh contacted a delegate from their union (1199SEIU) to report Edwards's inappropriate behavior and possession of pornography. Misas and McIntosh also requested that something be done to stop such conduct as they felt extremely uncomfortable.

20. The union delegate contacted the Human Resources department at Lenox Hill ("Human Resources") and, as a result, Edwards was asked to resign.

21. McIntosh has also been subjected to unwelcome sexual behavior by Cardoza. By way of example, when McIntosh texted Cardoza one morning that she would not be working as she was ill, Cardoza's response was, "You need a Spanish/Italian sausage all the way," implying that McIntosh needed his penis inside of her to feel better. Cardoza also sent McIntosh wholly

inappropriate text messages stating that he wanted to “spank” her. A copy of those text messages are annexed hereto as “Exhibit A”.

**Hostile Work Environment**

22. After the departure of Edwards, Cardoza remained the sole supervisor of emergency room registrars at Lenox Hill until approximately March 2013 when an additional supervisor was hired.

23. Word spread throughout the emergency room registration department that Misas and McIntosh were responsible for Edwards’s departure. As a result, Misas and McIntosh became targets of torment by colleagues.

24. Cardoza engaged in a campaign of retaliation against Misas and McIntosh after Edwards’s departure.

25. Upon information and belief, Cardoza was aware that he violated Lenox Hill’s protocol by knowingly calling Misas and McIntosh into Edwards’s office to show them the inappropriate photographs and by sending McIntosh wholly inappropriate and vile text messages.

26. Cardoza and Misas had worked together previously at North Shore University Hospital in Manhasset, New York. Cardoza even assisted Misas in obtaining employment with Lenox Hill when a position in the emergency room registration department became available. However, after Edwards was fired, Cardoza’s treatment of Misas, as well as McIntosh, went from being friendly to becoming an adversary.

27. On or about August 22, 2012, Misas was bullied by a coworker. Misas went to Slavica Naumovski (“Naumovski”), the department manager, asking for assistance. Naumovski’s response was to “pay [the bully] no mind”, but the mistreatment continued.

28. On multiple occasions, starting in or about December 2012, Cardoza approached Misas and stated, "You're in trouble, but I don't know why yet." Cardoza would never explain the basis for his statement but made it clear he was going to retaliate against both Misas and McIntosh. Plaintiffs feared their jobs were in jeopardy and experienced daily anxiety as a result.

29. Cardoza also made material false representations to members of the emergency room registration department about Misas. Specifically, he asserted that Misas practices witchcraft.

30. On or about January 25, 2013, Misas had another incident with the same bullying coworker and once again it was brought to Naumovski's attention. Misas attended a meeting with the coworker and Naumovski, but yet again nothing was done to resolve the conflict.

31. Frustrated, Misas wrote a letter to Human Resources manager Emily Weisenbach ("Weisenbach") expressing her concerns. Once more, Misas was ignored. The bullying by the coworker continued despite Misas's repeated requests for help.

32. Similarly, McIntosh also experienced hostility after Edwards's departure.

33. In or about December 2012, McIntosh was the subject of false accusations made by two colleagues, who submitted written statements to security stating that McIntosh had threatened them.

34. Prior to Edwards's departure, McIntosh passed all her evaluations. McIntosh also received satisfactory evaluations after Cardoza left. However, while Cardoza was her supervisor, McIntosh only received poor evaluations and negative feedback.

35. Cardoza falsely claimed he warned McIntosh about her attendance. However, during a meeting with Human Resources on or about January 18, 2013, McIntosh did not receive

any negative feedback. Cardoza was present at the meeting that took place on or about January 18, 2013.

36. On or about February 6, 2013, McIntosh was verbally attacked by two coworkers during a regularly scheduled meeting with a union delegate. The two individuals accused McIntosh and Misas of being “untouchable” and the reason for Edwards’s departure.

37. Immediately after the meeting, McIntosh reported the incident to Cardoza while one of the coworkers reported the incident to Naumovski.

38. Less than one hour later, McIntosh was directed to meet with management with a union delegate present. At the meeting, which took place on or about February 7, 2013, McIntosh was reprimanded for poor attendance and productivity. The reprimand was in no way related to the issues presented to Cardoza by McIntosh the prior day.

39. The basis for the admonition was fabricated as Cardoza had repeatedly praised McIntosh for being a good worker and never took issue with her attendance. Cardoza even sent McIntosh text messages thanking her for her outstanding work.

40. During the meeting that took place on or about February 7, 2013, McIntosh was given a written summary of the meeting, which included false statements made by Cardoza regarding McIntosh’s attendance. A copy of the meeting summary is annexed hereto as “Exhibit B”.

41. Prior to the meeting that took place on or about February 7, 2013, McIntosh had been told by Cardoza that she needed to register a minimum of fifteen patients per shift. McIntosh did this, though some days there were more entries while other days there were less. McIntosh’s productivity was and is controlled by the number of patients registering and/or being

discharged and to require McIntosh to register/discharge a minimum number of patients is unrealistic and unfair.

42. During the meeting that took place on or about February 7, 2013, McIntosh was told she should be registering twenty-five to thirty patients per shift. McIntosh's union delegate objected to such numbers, saying that it would be impossible for anyone to meet those numbers. Management's response to the union delegate was that they would remove those numbers from their registration requirements. McIntosh then inquired why the meeting was taking place if the numbers were no longer relevant. Management informed McIntosh that the new heightened requirements came directly from Human Resources.

43. Notably absent from the written summary of the February 7, 2013 meeting is the discussion of the registration requirement. However, the summary does state that on or about January 19, 2013 there were ten patients that were not registered in the area to which McIntosh was assigned. That was the first time that McIntosh had learned about disapproval of her performance on January 19, 2013.

#### **Retaliation Against Misas**

44. It is more than a coincidence that all disciplinary action taken against Misas began after she reported Edwards's misconduct. Lenox Hill was determined to find any excuse to terminate Misas and made sure to lay its predicate once Cardoza took charge.

45. Prior to her termination, Misas was suspended without pay four times from her job with Lenox Hill. Each suspension was a retaliatory act.

46. Misas's first suspension occurred on or about January 16, 2013. She was informed she was suspended for violating HIPAA (Health Insurance Portability and Accountability Act). However, the disciplinary papers she was given list the reason for the

suspension as Misas creating a new account and failing to correct the patient's information, specifically the social security number. (A copy of the disciplinary papers are annexed hereto as "Exhibit C".) This is simply not possible during the registration and discharge processes.

47. Misas was not afforded an opportunity to rebut the allegations.

48. After Misas's first suspension, McIntosh approached Cardoza to discuss an unrelated issue. While speaking with McIntosh Cardoza stated, "These people here do whatever they want. Look at Misas. I could have saved her, but, nah. My supervisors wanted her suspended."

49. Prior to her second suspension, Misas was given her annual evaluation for the year of March 2012 to March 2013 by Cardoza. Although she had passed all her previous evaluations, Misas failed this evaluation. Upon information and belief, Cardoza failed Misas in retaliation for her prior complaints. Cardoza even admitted to Misas's coworkers that he failed her for items that were not true.

50. Among the accusations levied against Misas by Cardoza was that she arrived late to work. In March 2013, she was told she arrived late to work on three different days. Misas was presented with a time sheet that appeared to have been tampered with—there was white out and someone else's handwriting marking her late. After being presented with the tampered time sheet—which she was not allowed to keep, Misas made a copy of another time sheet which also appeared to have been whited-out to prove she was being set up by Cardoza. A copy of that time sheet is annexed hereto as "Exhibit D".

51. On another date, Misas was accused of arriving late though she was violently ill and had been admitted as a patient immediately upon her arrival to Lenox Hill. Notwithstanding records showing her admission as a patient, Misas was marked as tardy.

52. Misas and her union delegate requested Cardoza investigate the tampering of time sheets. Cardoza refused to do so. Specifically, Misas asked Cardoza about the time sheet tampering. Yet, Cardoza refused to even discuss the issue with her.

53. On or about April 10, 2013, Misas was suspended for a second time for alleged tardiness. At that time, Misas once more inquired about Cardoza's investigation about the time sheets. He simply responded that Human Resources was handling it, even though he never informed Misas of that prior thereto.

54. After being suspended for a second time, and because she was concerned that Cardoza was fabricating a context in which to fire her, Misas began to copy time sheets to prove she was being set up by Cardoza.

55. On or about May 29, 2013, Misas was suspended a third time for allegedly arriving late twice during the month of May. However, Misas was never credited for the times she worked through lunch, which she would mark on the time sheet as "no lunch".

56. On or about June 6, 2013, Misas was asked by her new supervisor, Pansy Coleman ("Coleman"), and manager, Joyce Desmond ("Desmond"), if she copied time sheets. Misas denied that she did as she knew it was a trap. Misas was afraid she would be told to return the copies and they were the only written proof she had that she was being set up, which was necessary for her protection.

57. On or about June 21, 2013, Misas was shown a surveillance video recording of her making a copy of a time sheet. Later that same day Misas was told by her department manager, Lauren Acosta ("Acosta"), that she was suspended indefinitely.

58. Notwithstanding Misas's continued complaints that time sheets were clearly being tampered with, no one at Lenox Hill investigated these allegations.

59. On or about July 2, 2013, Misas received a letter stating that she was terminated on June 21, 2013 for her multiple suspensions and lying about copying time sheets.

60. Lenox Hill does not have a written policy that states that workers are not allowed to copy their own timesheets.

61. One of Misas's colleagues in the emergency room registration department also photocopied timesheets. When questioned about it by her supervisors, the other employee denied photocopying the timesheets herself but did confirm that Misas photocopied timesheets. Her employment with Lenox Hill was not terminated. Upon information and belief, Cardoza knew that the other employee had photocopied timesheets.

#### **Retaliation Against McIntosh**

62. McIntosh has requested a transfer to other departments, but was informed the only way she can leave the emergency room registration department was to apply through Human Resources for open positions.

63. McIntosh has seniority within the emergency room registration department due to her longevity as a part-time worker. Cardoza knew that McIntosh was seeking a full-time position.

64. McIntosh has applied for several full-time positions only to be told the positions were given to another applicant. When a full-time position became available within the emergency room registration department, the position was automatically given to one of McIntosh's coworkers without allowing her an opportunity to interview. McIntosh has been told by Human Resources representatives that she cannot obtain a full-time position due to the written accusations Cardoza has submitted against McIntosh, all of which are false.

65. Cardoza also gave preference to others over McIntosh in giving extra hours. McIntosh should have received preference because of her seniority. McIntosh would regularly inform Cardoza of her availability for the following week, but each time Cardoza told McIntosh that all the shifts were covered.

66. On or about May 8, 2013, McIntosh met with Herbert Bowen ("Bowen"), the manager of the emergency room registration department, who informed McIntosh she should be given extra hours.

67. However, Cardoza refused to give any extra hours. The only extra hours McIntosh has received are from her union delegate, who offered her hours when she went on vacation.

68. Individuals with less seniority than McIntosh, including employees brought in by Cardoza, have received extra hours.

69. The only reason Cardoza denied McIntosh extra hours was due to his retaliation of McIntosh.

70. Before her issues with Cardoza, McIntosh would receive extra hours, working approximately sixty to seventy hours per week. Since approximately April 2013, McIntosh has been working approximately twenty-eight hours biweekly. Though McIntosh provided Management with a schedule of her availability, Management continues to offer McIntosh extra hours on days she is not available.

71. McIntosh is no longer eligible for full medical insurance coverage as she is working less than forty hours per week.

72. In or about May 2013, McIntosh met with Human Resources representative Keira Stajk ("Stajk") to file a complaint against Cardoza. However, Stajk informed McIntosh that she

must go through the chain of command in the emergency room registration department before filing a complaint with Human Resources.

73. McIntosh has also been singled out for seeking coverage from colleagues.

74. On or about May 23, 2013, McIntosh submitted a request form for vacation leave for two days. McIntosh informed Cardoza that she already had found two people to work for her during those days. The request form was completed and signed by the two individuals. Cardoza informed McIntosh she had properly followed procedure, as it was the regular practice of registrars to find their own coverage when planning to take time off.

75. However, on or about June 6, 2013, when McIntosh emailed Cardoza to confirm her vacation request had been submitted, Cardoza did an about-face, informing McIntosh that from that point forward, Management would find coverage. McIntosh was the only person Cardoza told about this new "policy". Upon information and belief, no other registrars received an email from Cardoza stating there was a new policy in effect. Upon information and belief, there was no new policy in effect but Cardoza, once again, denied McIntosh the ability to work additional hours as an act of retaliation.

76. On or about June 21, 2013, McIntosh met with Bowen to discuss Cardoza's inappropriate behavior and retaliatory actions. McIntosh brought her union delegate to the meeting. Initially, Bowen would not allow the union delegate be present at the meeting. Bowen eventually allowed the union delegate in the meeting, but asked her to leave once she tried to speak on behalf of McIntosh. Additionally, Bowen would not agree to discuss the various issues McIntosh raised and instead told her that any concerns would have to be addressed by Human Resources, which contradicted what Stajk stated to McIntosh in their meeting in or about May 2013.

77. On or about July 1, 2013, McIntosh met with Stajk who informed McIntosh that a complaint was filed accusing McIntosh of aggressively approaching coworkers to start a petition against Management and trying to find out who "ratted" on Misas to cause her to be fired. The allegations were not true.

78. Until the meeting on or about July 1, 2013, McIntosh never had a supervisor speak with her regarding her interactions with coworkers.

79. Upon information and belief, Cardoza was behind the complaint filed in or about July 2013 due to the proximity in time to McIntosh's meeting with Bowen to discuss Cardoza as well as the close relationship Cardoza had with the complainant co-workers.

80. McIntosh, psychologically damaged from Cardoza's mistreatment of her, decided to meet with coworkers to better understand whether Cardoza was retaliating against her and Misas. In one such meeting, a coworker disclosed to McIntosh that she and Misas were clearly retaliation targets. In fact, the coworker revealed that Cardoza had been attempting to get Plaintiffs fired and even asked the coworker to fabricate a claim against both to Human Resources. According to the coworker, Cardoza requested that she file a false complaint against Misas and McIntosh with Human Resources, telling the coworker: "I need you to be an actress. I need you to cry in HR," indicating that he wanted to falsify a claim so he could terminate Plaintiffs.

81. In or about November 2013, Cardoza was transferred to another North Shore-LIJ hospital.

82. As a result of their mistreatment by Lenox Hill, Misas and McIntosh have been extremely depressed and stressed. Misas was prescribed Xanas as well as other anti-depressants, but has not been able to refill her prescriptions after her termination as she has not been able to

afford health insurance. Misas also was seeking therapy while employed, but could not afford to continue the therapy after her termination. McIntosh has been diagnosed with panic/anxiety attacks, headaches and depression. McIntosh takes medications for these diagnoses and has been forced to take time off from work due to stress.

**FIRST CLAIM FOR RELIEF**

**VIOLATIONS OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e-5(f), *et seq.*, AS AMENDED**

**SEXUAL HARASSMENT**

83. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

84. While employed at Lenox Hill, Misas and McIntosh were subject to unwelcome harassment by their superiors based on their sex, including, but not limited to, unsolicited remarks regarding breasts, text messages discussing penises, and viewing pornographic photographs on computers belonging to Lenox Hill, in violation of Title VII.

85. As a result of the unwelcome harassment, Misas and McIntosh became extremely stressed and anxious and did not feel comfortable in their place of employment.

86. Misas and McIntosh reported the unwelcome harassment to Lenox Hill.

87. As a result of and in retaliation for their reports, Misas and McIntosh were subjected to hostile and abusive behavior by their superiors.

88. Lenox Hill was made aware of the hostile and abusive behavior and did not take action to eliminate the harassment.

89. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

90. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

91. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

92. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

93. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

94. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under Title VII.

**SECOND CLAIM FOR RELIEF**

**VIOLATIONS OF TITLE VII, 42 U.S.C. § 2000e(k)**

**RETALIATION**

95. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

96. Lenox Hill retaliated against Plaintiffs because they insisted on working in an environment free of sexual harassment and also because they complained about said harassment.

97. Lenox Hill retaliated against Plaintiffs by subjecting them to adverse employment actions, including, but not limited to, subjecting McIntosh to unwarranted denial of overtime, falsified performance evaluations, discriminatory subjection to discipline procedures, disparate terms and conditions of employment, harassment, hostile work environment, asking employees to fabricate claims, and other forms of retaliation in violation of Title VII.

98. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

99. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

100. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

101. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good name and reputation, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

102. By reason of the retaliation Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under Title VII.

**THIRD CLAIM FOR RELIEF**

**VIOLATIONS OF N.Y. EXEC. LAW § 296**

**SEXUAL HARASSMENT**

103. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

104. While employed at Lenox Hill, Misas and McIntosh were subject to unwelcome harassment by their superiors based on their sex, including, but not limited to, unsolicited remarks regarding breasts, text messages discussing penises, and viewing pornographic photographs on computers belonging to Lenox Hill, in violation of New York Executive Law § 296.

105. As a result of the unwelcome harassment, Misas and McIntosh became extremely stressed and anxious and did not feel comfortable in their place of employment.

106. Misas and McIntosh reported the unwelcome harassment to Lenox Hill.

107. As a result of and in retaliation for their reports, Misas and McIntosh were subjected to hostile and abusive behavior by their superiors.

108. Lenox Hill was made aware of the hostile and abusive behavior and did not take action to eliminate the harassment.

109. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

110. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

111. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

112. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

113. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

114. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under New York Executive Law § 296.

#### **FOURTH CLAIM FOR RELIEF**

#### **VIOLATIONS OF N.Y. EXEC. LAW § 296**

#### **RETALIATION**

115. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

116. In violation of New York Executive Law § 296, Lenox Hill discharged, expelled, or otherwise discriminated against Plaintiffs because they opposed practices forbidden by New York Executive Law § 296 or because they filed a complaint, testified or assisted in a proceeding under New York Executive Law § 296.

117. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

118. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

119. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

120. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

121. By reason of the retaliation Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under New York Executive Law § 296.

**FIFTH CLAIM FOR RELIEF**

**VIOLATIONS OF NEW YORK CITY ADMINISTRATIVE CODE § 8-107**

**SEXUAL HARASSMENT**

122. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

123. While employed at Lenox Hill, Misas and McIntosh were subject to unwelcome harassment by their superiors based on their sex, including, but not limited to, unsolicited remarks regarding breasts, text messages discussing penises, and viewing pornographic photographs on computers belonging to Lenox Hill, in violation of New York City Administrative Code § 8-107.

124. As a result of the unwelcome harassment, Misas and McIntosh became extremely stressed and anxious and did not feel comfortable in their place of employment.

125. Misas and McIntosh reported the unwelcome harassment to Lenox Hill.

126. As a result of and in retaliation for their reports, Misas and McIntosh were subjected to hostile and abusive behavior by their superiors.

127. Lenox Hill was made aware of the hostile and abusive behavior and did not take action to eliminate the harassment.

128. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

129. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas

has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

130. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

131. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

132. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

133. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under New York City Administrative Code § 8-107.

#### **SIXTH CLAIM FOR RELIEF**

#### **VIOLATIONS OF NEW YORK CITY ADMINISTRATIVE CODE § 8-107**

#### **RETALIATION**

134. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

135. In violation of New York City Administrative Code § 8-107, Lenox Hill discharged, expelled, or otherwise discriminated against Plaintiffs because they opposed

practices forbidden by New York City Administrative Code § 8-107 or because they filed a complaint, testified or assisted in a proceeding under New York City Administrative Code § 8-107.

136. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

137. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

138. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

139. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

140. By reason of the retaliation Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available under New York City Administrative Code § 8-107.

**SEVENTH CLAIM FOR RELIEF**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

141. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

142. While employed at Lenox Hill, Plaintiffs suffered intentional infliction of emotional distress at the hands of Lenox Hill.

143. Lenox Hill's actions constitute conduct so extreme and outrageous in degree and character as to go beyond all possible bounds of decency.

144. Lenox Hill's actions can be regarded as atrocious and utterly intolerable in a civilized community.

145. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

146. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

147. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

148. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and

reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

149. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

150. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available.

### **EIGHTH CLAIM FOR RELIEF**

#### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

151. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

152. Lenox Hill's negligence caused Plaintiffs to suffer emotional distress.

153. Lenox Hill owed a duty to Misas and continues to owe a duty to McIntosh.

154. Lenox Hill breached this duty and unreasonably endangered the wellbeing of Plaintiffs by causing Plaintiffs to experience extreme stress and anxiety.

155. Lenox Hill's actions constitute conduct so extreme and outrageous in degree and character as to go beyond all possible bounds of decency.

156. Lenox Hill's actions can be regarded as atrocious and utterly intolerable in a civilized community.

157. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

158. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

159. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

160. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

161. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

162. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available.

#### **NINTH CLAIM FOR RELIEF**

##### **NEGLIGENT HIRING, RETENTION, AND SUPERVISION**

163. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs as if fully set forth herein.

164. As a result of direct negligence on the part of Lenox Hill, Plaintiffs experienced emotional distress.

165. Lenox Hill placed its employees, including, but not limited to, Cardoza, in a position to cause foreseeable harm, harm which Plaintiffs most probably would have been spared had Lenox Hill taken reasonable care in making its decision concerning the hiring and retention of employees, including, but not limited to, Cardoza.

166. Lenox Hill knew or should have known of the propensity of its employees, including, but not limited to, Cardoza, for the sort of conduct which caused the injuries of Plaintiffs.

167. Lenox Hill's conduct has been intentional, deliberate, willful, malicious, reckless, and/or negligent and conducted in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

168. Despite reasonable efforts, Misas has been unable to find comparable employment. As a direct and proximate result of Lenox Hill's aforementioned conduct, Misas has suffered and continues to suffer substantial economic losses, including the loss of past and future earnings, bonuses, deferred compensation, and other employment benefits.

169. Despite reasonable efforts, McIntosh has been unable to gain overtime. As a direct and proximate result of Lenox Hill's aforementioned conduct, McIntosh has suffered and continues to suffer substantial economic losses, including the loss of overtime earnings and health insurance.

170. As a further direct and proximate result of Lenox Hill's aforementioned conduct, Plaintiffs have suffered and continue to suffer impairment and damage to their good names and reputations, severe and lasting embarrassment, emotional pain, inconvenience, anguish, and other incidental and consequential damages and expenses.

171. By reason of the persistent harassment Plaintiffs have suffered at Lenox Hill, Plaintiffs are entitled to application of the continuing violation doctrine to all of the violations alleged herein.

172. By reason of the harassment Plaintiffs suffered at Lenox Hill, Plaintiffs are entitled to all legal and equitable remedies available.

**TENTH CLAIM FOR RELIEF**

**SLANDER PER SE**

173. Plaintiffs repeat and reallege each and every allegation contained in all prior paragraphs above as if fully set forth herein.

174. Cardoza knowingly made false statements about Plaintiffs which resulted in, among other things, damage to Plaintiffs' reputations.

175. Said statements were published to third parties.

176. Said statements resulted in special damages to Plaintiffs including but not limited to compensatory damages for loss of wages and overtime, harm to reputation as well as damages *per se*.

177. In light of the willful and intentional malfeasance described herein, Plaintiffs are entitled to all legal and equitable remedies available and an award of compensatory and punitive damages is requested against Cardoza.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs prays that this Court grant judgment to them containing the following relief:

A. Declaratory judgment that North Shore-LIJ's employment policies, practices, and procedures challenged herein are illegal and in violation of Title VII;

B. A permanent injunction against North Shore-LIJ and its partners, officers, owners, agents, successors, employees, and representatives, and any and all persons acting in concert with them from engaging in any further unlawful practices, policies, customs, usages, and gender and pregnancy discrimination as set forth herein;

C. An Order requiring North Shore-LIJ to initiate and implement programs that (i) will remedy the effects of Lenox Hill's past and present unlawful employment policies, practices, and procedures; and (iii) will eliminate the continuing effects of the discriminatory and retaliatory practices described herein;

D. An Order requiring North Shore-LIJ to initiate and implement systems of assigning, training, transferring, compensating, and promoting female employees in a non-discriminatory manner;

E. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (C) through (D) above, which would provide for (i) monitoring, reporting, and retaining of jurisdiction to ensure equal employment opportunity; (ii) the assurance that injunctive relief is properly implemented; and (iii) a quarterly report setting forth information relevant to the determination of the effectiveness of the programs described in (C) through (D) above;

F. An award of Plaintiffs' actual damages in an amount to be determined at trial for loss of wages, benefits, and promotional opportunities, including an award of front pay compensating Plaintiffs for loss of future salary and benefits and all damages affordable under the causes of action set forth herein;

G. An award of damages in an amount to be determined at trial to compensate Plaintiffs for mental anguish, humiliation, embarrassment, and emotional injury;

H. An award of punitive damages;

I. An award of reasonable attorneys' fees and the costs of this action, pursuant to federal, state and local statute;

J. Prejudgment interest;

K. Such other and further relief as this Court may deem just and proper; and

L. Retention of Jurisdiction by this Court until such time as the Court is satisfied that North Shore-LIJ has remedied the practices, policies, and procedures complained of herein and is determined to be in full compliance with the law.

Dated: New York, New York  
November 4, 2014

THE ROTH LAW FIRM, PLLC

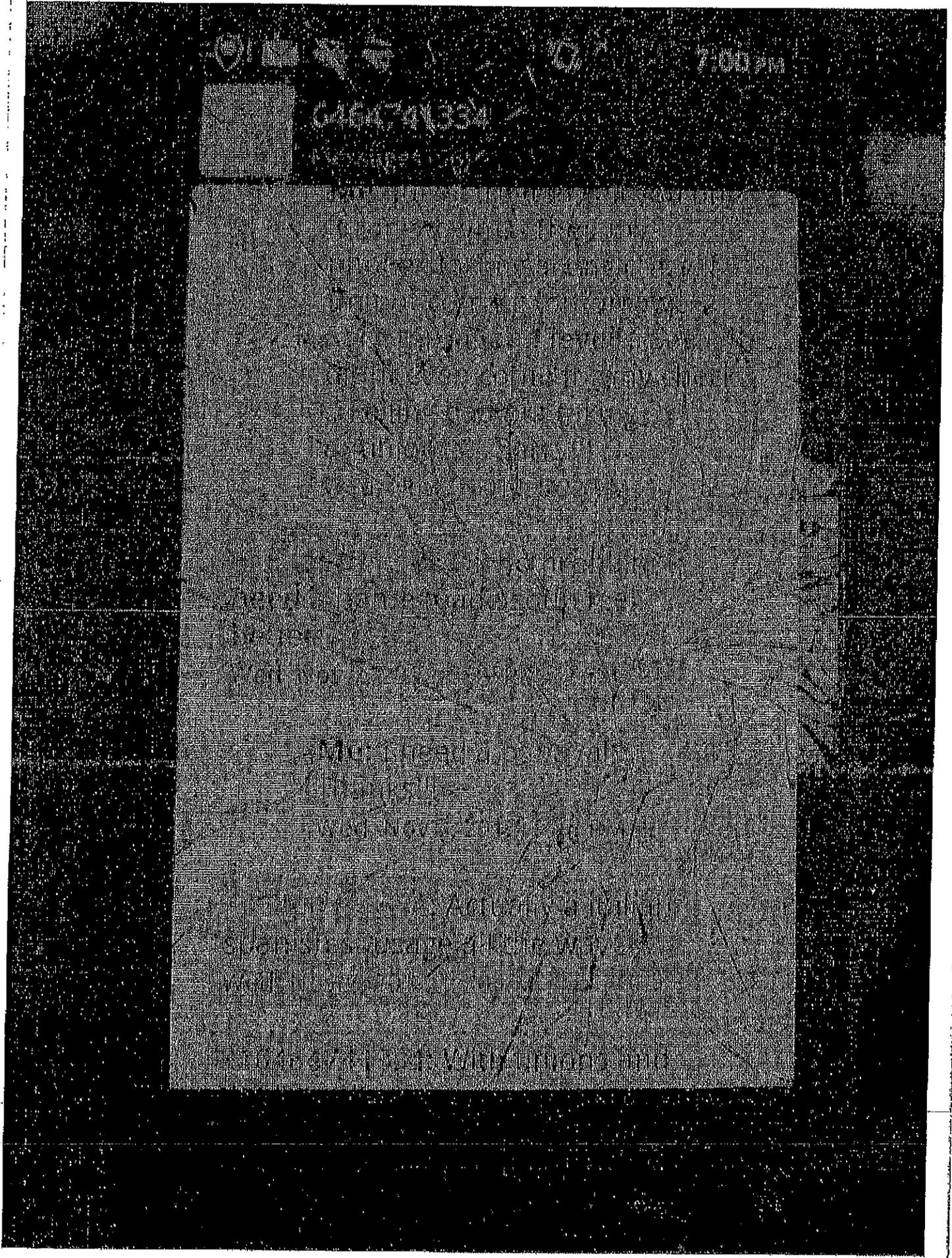
By: 

Richard A. Roth

295 Madison Avenue, 22nd Floor  
New York, New York 10017  
Tel: 212-542-8882

*Attorneys for Plaintiffs*

# EXHIBIT A





# EXHIBIT B



North Shore - Long Island Jewish Health System

### Disciplinary Warning Notice and Action Taken

Employee: Rhonda McIntosh

Dept: PAS

Job Title: Registrar

Date of Hire: 10-27-2010

Rule(s) Violated: Failure to adhere to HR Policy V3; Failure to adhere to core values, including putting firsts, teamwork, integrity, caring, innovation and excellence.

**Details of Violation: On: (dates)**

Ms. McIntosh was issued a verbal warning on December 22, 2011, that her performance was unsatisfactory, and that she needed to improve. Ms. McIntosh temporarily improved, but has gradually returned to the same poor standard of quality and performance. She is consistently averaging 12-13 registrations per shift. On Saturday, January 19, 2013, there were 10 patients that were not registered in the area that she was responsible for. She needs to bring her performance up to the ER registration standards.

Ms. McIntosh was advised that poor productivity greatly impacts the department negatively. Therefore, it is imperative that she improve immediately. Going forward, McIntosh was told she was to adhere to the following:

She will register ALL patients preferably within 30 minutes of their arrival to the treatment area, and no later than one hour after their arrival.

She is to complete ALL registrations per shift when in Acute or South, or Fast Track Area and is to complete All admissions that populate during her shift.

Whenever covering the discharge desk, she will provide as much assistance as needed to the Fast Track registrations.

She was verbally informed of the hospital policy, which was reviewed with her today, and has been informed of this warning and is aware that any future occurrences of this nature may result in further disciplinary action, up to and including termination. She had 1199 union representation in the form of Carmen Ramos, 1199 union delegate.

**Employee Comments: (if desired)**

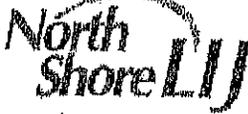
First Written Warning for Standards of Conduct.

**IMMEDIATE SATISFACTORY IMPROVEMENT MUST BE SHOWN  
OR FURTHER DISCIPLINARY ACTION WILL BE TAKEN**

**Disciplinary Action:**

- Warned and admonished
- Suspension working days, effective \_\_\_/\_\_\_/\_\_\_ (date)
- Discharge, effective \_\_\_/\_\_\_/\_\_\_ (date)

# EXHIBIT C



North Shore-Long Island Jewish Health System

**Disciplinary Warning Notice  
and Action Taken**

Employee: Ellana Misas

Dept: PAS/ER

Job Title: Registrar

Date of Hire: 03-19-2011

Rule(s) Violated: Failure to Adhere to HR Policy V:1 & 2 Conduct in the Workplace- Incompetence and / or misconduct  
Failure to adhere to core values, including putting patients first, teamwork, integrity, caring, innovation and excellence.

Details of Violation: On: (dates)

On December 13, 2012, Ms. Misas upon discharging a patient, failed to interview and accurately verify the patients information, this includes SS#, name and correct date of birth, therefore a new account was created with a new Medical Record number. Patient returned to the ER upset because her prescription was unable to be filled due to another patients information was provided to her. Failure to verify the information, created a breach in patient privacy and is a HIPAA violation. Ms. Misas failed to comply with proper patient registration procedures. Failure to adhere to these procedures has a negative impact on patient care, throughput, regulatory compliance, and insurance reimbursement. This behavior is unacceptable, Ms. Misas is to show greater care and diligence in performing her registration duties. This case, resulted in a severe HIPAA violation.

Ms. Misas must improve her performance by following the registration policies and procedures as indicated in this area immediately. Failure to do so will result in further disciplinary action, including but not limited to termination.

Employee Comments: (if desired)

Suspension, Conduct in the Workplace.

**IMMEDIATE SATISFACTORY IMPROVEMENT MUST BE SHOWN  
OR FURTHER DISCIPLINARY ACTION WILL BE TAKEN**

Disciplinary Action:

- Warned and admonished
- Suspension 3 working days, effective 1/17/2013 (date)
- Discharge, effective 1/1 (date)

Signature of: <i>Joh. A. Cardozo</i> Date: <u>1/16/13</u>	Signature of (signifying receipt) <i>Ellana Misas</i> Date: <u>1/16/13</u>
Supervisor <i>[Signature]</i> Date: <u>1/16/13</u>	
Dept. Head <i>[Signature]</i> Date: <u>1/16/13</u>	
Witness <i>[Signature]</i> Date: <u>1/16/13</u>	Employee <i>[Signature]</i> Date: <u>1/16/13</u>

# EXHIBIT D

**PASSEY Staff Sign-in Sheet - Admittng**

Name	Signature	Time		A.M.		A.M.		Lunch		Lunch		P.M.		P.M.		Time		Initials	
		IN	Out	Break	Out	Break	In	Out	In	Out	Break	In	Out	Out					
Esquivel, Pamela	<i>[Signature]</i>		10 pm					2	3										<i>[Initials]</i>
Carpenter, Shantina																			
Cuevas, Jessica																			
Diaz, Diana																			
Escobedo, Jaleshique																			
Ewart, Sherry																			
Harding, Dara																			
Johnson, Sophia	<i>[Signature]</i>		12:30 pm		Evening														<i>[Initials]</i>
King, Wilbert	<i>[Signature]</i>		4 pm																<i>[Initials]</i>
Macintosh, Rhonda																			
Mises, Eleana	<i>[Signature]</i>		8 am					12:45	1:45										4 pm <i>[Initials]</i>

354

Moses, Yelena	7:45 AM									
Plimental, Alejandra	7:45 AM									
Ramos, Carmen										
Sanchez, Eliana										
Sharma, Stella	4 PM									
Sherman, John										
Torres-Baez, Lindie	3:53 PM									
Torres-Baez, Lindie	7:45 AM									

Lunch

Worked thru lunch

4:05 AM

4:05 PM