

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CAYUGA  
=====

KAREN ODRZYWOLSKI,

*Plaintiff,*

v.

**SUMMONS**

AUBURN COMMUNITY HOSPITAL,  
AUBURN MEMORIAL MEDICAL  
SERVICES, P.C., SCOTT BERLUCCHI, JOHN  
RICCIO, PATSY IANNOLO, and JEREMY  
BARNETT.

Index No.:

*Defendants.*  
=====

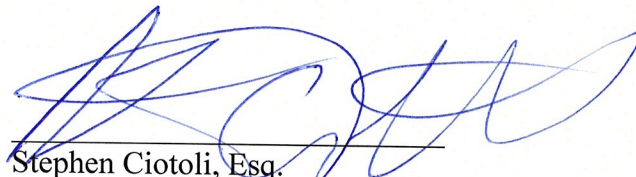
TO: ALL NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on the Plaintiff's attorneys within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York).

The basis of the venue designated above is the location of plaintiff domicile.

IF YOU FAIL TO ANSWER, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 6, 2019

  
\_\_\_\_\_  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CAYUGA  
=====

KAREN ODRZYWOLSKI,

*Plaintiff,*

v.

VERIFIED COMPLAINT

AUBURN COMMUNITY HOSPITAL,  
AUBURN MEMORIAL MEDICAL  
SERVICES, P.C., SCOTT BERLUCCHI, JOHN  
RICCIO, PATSY IANNOLO, and JEREMY  
BARNETT.

Index No.:

*Defendants.*  
=====

Plaintiff, Dr. Karen Odrzywolski (hereafter "Plaintiff"), by and through her attorneys, GATTUSO & CIOTOLI, PLLC, for her Verified Complaint against Defendants Auburn Community Hospital, Auburn Memorial Medical Services P.C., Scott Berlucchi, John Riccio, Patsy Iannolo, and Jeremy Barnett states as follows:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to Section 140-b of the New York Judiciary Law, which provides that the Supreme Court of New York has general jurisdiction.

2. This Court has personal jurisdiction over Defendants because they committed tortious acts in Cayuga County and Plaintiff's suffered harm in Cayuga County.

3. Venue is appropriate pursuant to Section 503 of the CPLR because Plaintiff is domiciled in Cayuga County and, upon information and belief, Defendants' residences and principal place of business is in Cayuga County.

**PARTIES**

4. Plaintiff resides at 5535 Mobbs Road, Auburn, NY 13021, which is located in Cayuga County.

5. Defendant, Auburn Community Hospital ("the Hospital"), is located at 17 Lansing St., Auburn, NY 13021, and is a general hospital in Cayuga County that operates under a not-for-profit public trust with a Board of Trustees as the governing body.

6. Defendant Auburn Memorial Medical Services, P.C., (the "P.C.") is a privately owned New York professional services corporation, located at 17 Lansing St., Auburn, NY 13021. Upon information and belief, the P.C. was helped established by and is directly affiliated with the Hospital.

7. Defendant Scott Berlucchi ("CEO Berlucchi") is the Chief Executive Officer and President of the Hospital and P.C., and was one of Plaintiff's direct supervisors during all times relevant herein.

8. Defendant John Riccio ("CMO Riccio") is the Chief Medical Officer of the Hospital, and was one of Plaintiff's direct supervisors during all times relevant herein.

9. Defendant Patsy Iannolo ("Dr. Iannolo") is the director of the Hospital's Emergency Room.

10. Defendant Jeremy Barnett ("Dr. Barnett") is, upon information and belief, a former physician and employee of the Hospital.



## FACTUAL BACKGROUND

11. Plaintiff is a triple board certified neurologist and was employed by the Hospital and the P.C. from 2013 to September 2018.

12. During her tenure with the Hospital and P.C., Plaintiff worked as general neurologist for the P.C. and was employed as a contractor by the Hospital to serve as the medical director of its Stroke Program.

13. In addition to working at the Hospital and P.C., Plaintiff is employed by the University of Rochester Medical Center as clinical instructor. Plaintiff has been employed by the University of Rochester Medical Center during all relevant times mentioned herein.

14. While working at the Hospital, Plaintiff was subjected to various forms of discrimination and hostile treatment by her superiors and colleagues.

15. In addition, Plaintiff witnessed a continuous pattern of negligence, harassment, and deceptive practices by specific doctors and administrative leaders. Plaintiff witnessed and communicated concerns relating to issues of patient care, employee accountability, and troubling patient care protocol decisions to her colleagues and superiors.

16. As a result of her initiative to express these concerns and attempt to initiate some form of corrective action where needed, Plaintiff was targeted and retaliated against. These adverse actions and hostile work environment ultimately culminated in her constructive discharge.

### ***I. GENDER-BASED DISCRIMINATION***

17. Plaintiff experienced several different forms of gender-based discrimination that were either known and perpetuated by the Defendants.



18. Plaintiff was deliberately and discriminately excluded from Director's Meetings that were convened and held every week by CEO Berlucchi. The purpose of these meetings was to invite and gather all the medical directors within the Hospital to address important medical, organization, performance, and policy issues.

19. Plaintiff was the only female medical director in the entire Hospital at the time (Stroke Program), and was never invited or allowed to attend in these meetings.

20. The only exception to this pattern involved two meetings that took place in February 2018, during which matters pertaining to the Stroke Program were discussed. Plaintiff attended one meeting briefly in person and the other over via phone conference. However, at these few meetings that Plaintiff was asked to attend, she was subjected to unfair criticism and defamatory remarks by Dr. Patsy Iannolo and Dr. Jeremy Barnett in front of all other attendees.

21. Plaintiff was also treated less favorably than other male colleagues within her own medical specialty.

22. For example, Plaintiff was paid hourly by the Hospital and only received compensation for the hours that she actually worked. In comparison, Dr. Jianxin Ma, one of the male neurologists on staff at the Hospital who was also paid hourly, would at times only work for 2-3 hours a day, but still received compensation equivalent to as if he worked a full 8-hour shift.

23. The Hospital was aware of this discrepancy and took no corrective action despite the fact that multiple reports by the office manager were made concerning this disparity.

24. The Hospital also allowed Dr. Adham Kamel, a previous male neurologist employed at the Hospital, and Dr. Ma to take call from Manlius. They also allowed Dr. Ijaz

Rashid, another previous male neurologist, to take call from Brighton in Syracuse. These locations are well outside of the radius allowed in the Hospital's bylaws.

25. Plaintiff informed her superiors in writing about each of these male neurologists consistently taking call outside of the allowed radius. However, she was never allowed the same option. This limited the number of days that she could take call and thereby also reduced her on-call income relative to that of her male colleagues. Again, no corrective action or changes were ever implemented by the Hospital.

26. Another instance of discriminatory treatment came in the form of the performance standards that Plaintiff and other male doctors were required to meet in order to maintain privileges and employment.

27. In or around early 2017, Plaintiff was asked by CMO Riccio to proctor the charts of Dr. Jianxin Ma, which she did. Under Plaintiff's review, Dr. Ma failed the initial proctoring.

28. Approximately six (6) months later, CMO Riccio asked Plaintiff to proctor an additional ten (10) charts of Dr. Ma's, which she had to fail again due to not meeting standards.

29. In response, CMO Riccio told Plaintiff that they would just keep Dr. Ma on the active staff anyway and disregard the failed proctorings.

30. In contrast, Plaintiff was told by CMO Riccio and her superiors that her charts needed to pass proctoring in order for her to maintain full privileges and employment.

## **II. DEFAMATORY SLANDER ABOUT PLAINTIFF**

### ***a. February 7, 2018 Directors Meeting***

31. On February 7, 2018, Plaintiff was asked to attend a Directors Meeting at the Hospital. These weekly meetings are organized and convened by CEO Berlucchi, and are primarily

attended by the medical department and program leaders to discuss administrative and medical issues within the Hospital.

32. Despite having been the medical director of the hospital's Stroke Program for years, the Directors Meeting on February 7, 2018 was the first one that Plaintiff was invited and allowed to attend.

33. During this meeting, Plaintiff voiced her concerns about a proposition from Dr. Patsy Iannolo and Dr. Jeremy Barnett to have emergent CT angiograms performed on every stroke patient upon entering the emergency room. Plaintiff's position was that stroke patients do not receive an emergent CT angiogram as soon as they enter the emergency room due to issues with poor quality of these scans and the fact that the time performing the CT angiogram ultimately may delay treatment for patients. After discussing the matter, Plaintiff had to leave meeting early to attend previously scheduled appointments with her patients.

34. Plaintiff was later informed by another colleague who also attended the Directors Meeting that further discussions regarding the Stroke Program and her took place after she left. During these discussions, false and defamatory comments about Plaintiff's character and professional competency were made by Dr. Iannolo and Dr. Barnett to all individuals in attendance.

35. Specifically, Dr. Iannolo stated that Plaintiff was "*uncaring about stroke patients,*" and Dr. Barnett stated that Plaintiff was "*refusing to admit stroke patients who received IV TPA.*" Both Dr. Iannolo and Dr. Barnett also stated that Plaintiff was "*negatively affecting the recruitment of other neurologist to Auburn Community Hospital.*"



36. Plaintiff subsequently sent an e-mail to those who attended the Directors Meeting, including CEO Berlucchi, to defend herself against these accusations. Annexed hereto as **EXHIBIT A** is a copy of the e-mails Plaintiff sent to staff members defending herself against the defamatory remarks that were made against her, and her correspondence with CEO Berlucchi about the matter.

37. CEO Berlucchi later e-mailed and called Plaintiff the following morning and acknowledged that these defamatory comments were made. During their conversation, CEO Berlucchi apologized for the fact that these harmful remarks about her were made by Dr. Iannolo and Dr. Barnett, and stated that they were incorrect and unfair.

38. However, rather than addressing this matter or stating that he would take any action to address Dr. Iannolo or Dr. Barnett's behavior, CEO Berlucchi was focused on pressuring Plaintiff to name the person who informed her about what was said. *See EXHIBIT A.*

39. CEO Berlucchi had no intent to resolve this matter and defended this behavior by stating "these meetings should be confidential, and that people should be free to express their feelings openly in this setting." CEO Berlucchi ended up creating a "confidentiality/non-disclosure agreement" for people to sign as part of partaking in these Director Meetings. CEO Berlucchi also continued to deliberately exclude Plaintiff from future Directors Meetings.

*b. February 21, 2018 Directors Meeting*

40. On February 21, 2018, Plaintiff was asked to attend another Directors Meeting to discuss about the Stroke Program and the Telestroke Program the Hospital established with the University of Rochester Medical Center.

41. Also in attendance at this meeting were UPMC Stroke Director Dr. Curtis Benesch, who attended via phone conference, and Dr. Marc Baker, a private practice cardiologist from Auburn, NY.

42. During this meeting, Plaintiff openly discussed with Dr. Benesch and Dr. Iannolo about ways to address existing protocol and procedure issues with the Hospital's Stroke Program and the Telestroke Program.

43. Dr. Benesch left the meeting early. After Dr. Benesch left, Dr. Iannolo proceeded to state more negative and false remarks about Plaintiff's character and professional competency to everyone at the meeting.

44. Specifically, Dr. Iannolo stated that "*the entire reason why there were issues with the Telestroke program at the Hospital was because of [Plaintiff],*" and that she was "*not a stroke director who cares about stroke patients.*" Dr. Iannolo also claimed that Plaintiff would "*not come into the hospital to see stroke patients.*"

45. Plaintiff attempted to defend herself against these claims. However, CEO Berlucchi, just as with the prior Directors Meeting, did nothing to stop Dr. Iannolo or address his actions during or after he made these defamatory remarks despite being there in attendance and witnessing them.

*c. Further Defamation of Plaintiff to UPMC and Damage from Defamatory Remarks*

46. CEO Berlucchi and Dr. Iannolo continued to defame Plaintiff's professional reputation and competency to her colleagues and superiors at the University of Rochester Medical Center, including Dr. Benesch and Dr. Webster Pilcher, Director of Neurosurgery.

47. On multiple occasions between March 2018 through May 2018, CEO Berlucchi and Dr. Iannolo spoke directly to Dr. Benesch and Dr. Pilcher at URMC and reiterated the same defamatory comments that were made before about Plaintiff regarding her professional competency and character.

48. CEO Berlucchi and Dr. Iannolo used these defamatory claims as grounds to try influencing Dr. Benesch and Dr. Pilcher to agree to having Dr. Barnett take Plaintiff's place as the Hospital's Stroke Program Director. This was done in spite of Plaintiff's longstanding excellent performance as Stroke Director, and signified that Plaintiff was being unfairly targeted by Dr. Iannolo, Dr. Barnett, and CEO Berlucchi in order to remove her.

49. In the months following the defamatory actions against Plaintiff by Dr. Iannolo, Dr. Barnett, and CEO Berlucchi, Plaintiff experienced a significant decline in patient referrals.

50. Dr. Pilcher from URMC referred patients to Plaintiff on a regular basis, and would call and e-mail Plaintiff frequently. After the Defendants' defamatory actions against Plaintiff, Dr. Pilcher has not contacted Plaintiff about referrals or referred any patients to her.

51. Dr. Marc Baker also used to regularly refer patients in Auburn to Plaintiff. He has ceased doing so after these defamatory remarks against Plaintiff were made by the Defendants.

### **III. PLAINTIFF RETALIATED AGAINST FOR WHISTLEBLOWING**

52. Plaintiff was subjected to various forms of retaliation by the Defendants because of her actions in reporting acts of dangerous medical practices performed by Dr. Barnett on patients.

53. On February 23, 2018, Plaintiff e-mailed CMO Dr. Riccio regarding two patients who received blatantly inappropriate and harmful care from Dr. Barnett. Plaintiff explained to Dr. Riccio that she could no longer take patient calls when Dr. Barnett was on service due to the risks



of liability that he created. Annexed hereto as **EXHIBIT B** is a copy of the e-mails that Plaintiff sent to CMO Riccio and Dr. Shakeel Usmani regarding her complaints against Dr. Barnett.

54. Dr. Riccio responded on February 27, 2018, defending the inappropriate test that was done by Dr. Barnett, and the delay of a necessary patient transfer. He also told Plaintiff to learn how to work with Dr. Barnett.

55. On May 29, 2018, Plaintiff emailed Dr. Shakeel Usmani, President of the Medical Staff, about these same complaints and requesting that he investigate them. *See EXHIBIT B*. Dr. Usmani never provided any response to Plaintiff.

56. Around this time, Plaintiff became aware that Dr. Iannolo, Dr. Riccio, and CEO Berlucchi were working on having Plaintiff removed from her position as Director of the Stroke Program.

**IV. PLAINTIFF'S CONSTRUCTIVE DISCHARGE AND ADDITIONAL WHISTLEBLOWER RETALIATION**

57. On July 6, 2018, in light of the continuing adversities against her and the intent by the Defendants to have her removed from her position, Plaintiff tendered her 60-day notice of resignation to the Hospital.

58. The Hospital proceeded to hire another neurologist, who was scheduled to start October 15, 2018. On July 17, 2018, CEO Berlucchi offered and requested to Plaintiff that she remain on staff on a per diem basis to help with patient care until the new neurologist started. Plaintiff agreed to stay on for this period of time solely for the purpose of providing patient care and not abandoning the patients. CEO Berlucchi subsequently sent Plaintiff an amendment to her employment contract, signifying that she would continue to work and be paid beyond her originally scheduled last day of September 4, 2018.

59. On August 17, 2018, Plaintiff e-mailed CEO Berlucchi with some requested minor changes to her contract amendment for him to review. In addition, Plaintiff also listed in her e-mail a number of new performance complaints against Dr. Barnett. She informed CEO Berlucchi that additional RL6 complaints had been submitted against Dr. Barnett, and that there was evidence of Dr. Barnett plagiarizing medical records. Plaintiff requested these allegations be investigated.

60. The next day, after reading Plaintiff's additional complaints and requests concerning Dr. Barnett, CEO Berlucchi sent a terse e-mail stating that Plaintiff would no longer be needed at the Hospital after her end date on September 4th.

61. When Plaintiff asked CEO Berlucchi about why he had changed his mind about her extension, he responded that both he and CMO Riccio felt that a "clean break would be better due to how things came down." Plaintiff was also told by CEO Berlucchi that it was a "crap move to give a 60-day notice" of her resignation and "you will get your head handed to you if you treat executives like that." CEO Berlucchi also told Plaintiff to "be careful out there."

**V. ADDITIONAL PAIN AND SUFFERING CAUSED BY DEFENDANTS**

62. Plaintiff has experienced the Shingles twice over the past year. Plaintiff's primary care provider indicated this not typical for an otherwise healthy 39-year-old person, and that it is directly attributable to the stress from her job at the Hospital. Plaintiff has developed long-standing nerve pain as a direct result, which impacts her quality of life.

63. Plaintiff is on medications for severe and chronic nerve pain as a result of the stress from the Defendants' actions, which causes drowsiness and precludes her from working night shifts, thereby limiting her employment options.

64. Plaintiff has incurred costs for emergency room visits, doctors visit and medications as a result of the harm caused by the Defendants' actions.

**FIRST CAUSE OF ACTION**

**NEW YORK EXECUTIVE LAW § 296 – HUMAN RIGHTS LAW**

**UNLAWFUL GENDER-BASED DISCRIMINATORY PRACTICES**

65. Plaintiff hereby incorporates all previously stated paragraphs inclusive, as if fully set forth herein.

66. Under the terms of New York Executive Law § 292, the Defendants Hospital, P.C., and CEO Berlucchi constitute an “employer” for the purposes of this cause of action, and Plaintiff constitutes an “employee.”

67. Under New York Executive Law § 296, it is unlawful for an employer to discriminate against an individual in compensation or in terms, conditions or privileges of employment because of his or her gender.

68. By the acts and conduct described herein, a hostile and discriminatory work environment was directed towards Plaintiff based on her gender in regard to compensation, conditions, and privileges of employment. This environment was sufficiently severe and pervasive to alter the conditions of Plaintiff's employment.

69. Upon information and belief, Defendants had knowledge of the hostile and discriminatory work environment that existed for Plaintiff, and in fact created and participated in the hostile and discriminatory work environment towards Plaintiff and allowed it to continue.



70. Defendants engaged in unlawful discriminatory practice by excluding Plaintiff from Medical Directors meeting due to being the only female medical director in the Hospital, and by deliberately treating Plaintiff's male colleagues more favorably than her in terms of compensation, performance standards, and employment privileges.

71. As a direct and proximate result of these discriminatory acts, Plaintiff suffered monetary damages, including attorney's fees, emotional and psychological damages, embarrassment, humiliation, emotional distress and mental anguish and suffering.

72. Plaintiff seeks damages and all forms of relief available.

### **SECOND CAUSE OF ACTION**

#### **NEW YORK LABOR LAW SECTION 741 - HEALTH CARE WHISTLEBLOWERS**

73. Plaintiff hereby incorporates all previously stated paragraphs inclusive, as if fully set forth herein.

74. Under New York Labor Law § 741, Plaintiff qualifies as an employee," and the Defendants all qualify as "employers" and/or "agents" as defined by the statute.

75. By the acts and conduct described herein, Plaintiff was retaliated against for reporting to her supervisors what she in good faith believed to constitute improper quality patient care.

76. Defendant was afforded a reasonable opportunity to investigate, address, and correct such activity, but failed to do so in any way.

77. As a result of Plaintiff's actions, Defendants retaliated against her by defaming her professional reputation and character, conspiring to remove her from her position as medical

director of the Hospital's Stroke Program, and breached an agreement to have Plaintiff remain on staff for a period of time following September 4, 2018. Defendants provided no justifiable reason for its actions.

78. As a direct and proximate result of these retaliatory acts, Plaintiff suffered monetary damages, including loss of income, attorney's fees, emotional damages, embarrassment, humiliation, and suffering.

79. Plaintiff seeks damages and all forms of relief available.

### THIRD CAUSE OF ACTION

#### DEFAMATION AND SLANDER

80. Plaintiff hereby incorporates all previously stated paragraphs inclusive, as if fully set forth herein.

81. During Directors Meetings convened on February 7, 2018 and February 21, 2018, Dr. Iannolo openly made multiple defamatory and slanderous remarks to members of the Hospital's medical staff and other medical professionals from the local community about Plaintiff's professional character and competency, as depicted above.

82. Specifically, Dr. Iannolo stated that Plaintiff was "*uncaring about stroke patients*," and Dr. Barnett stated that Plaintiff was "*refusing to admit stroke patients who received IV TPA*." Both Dr. Iannolo and Dr. Barnett also stated that Plaintiff was "*negatively affecting the recruitment of other neurologist to Auburn Community Hospital*."

83. Dr. Iannolo also stated that "*the entire reason why there were issues with the Telectroke program at the Hospital was because of [Plaintiff]*," and that she was "*not a stroke*

*director who cares about stroke patients.” Dr. Iannolo also claimed that Plaintiff would “not come into the hospital to see stroke patients.”*

84. Furthermore, these statements and similar remarks were repeated by Dr. Iannolo and CEO Berlucchi to Plaintiff’s superiors and colleagues at the University of Rochester Medical Center, specifically Dr. Curtis Benesch and Dr. Webster Pilcher, on multiple occasions between March 2018 and May 2018.

85. These statements were untrue, and were made with malicious intent.

86. As a direct and proximate result of these defamatory statements, Plaintiff experienced a reduction in patient referrals from colleagues who heard these slanderous remarks, and suffered damage to her professional reputation and credibility. Furthermore, Plaintiff has suffered monetary damages, including loss of income, attorney’s fees, emotional damages, embarrassment, humiliation, and suffering.

87. Because these statements tend to injure Plaintiff in her profession, the statements constitute defamation per se.

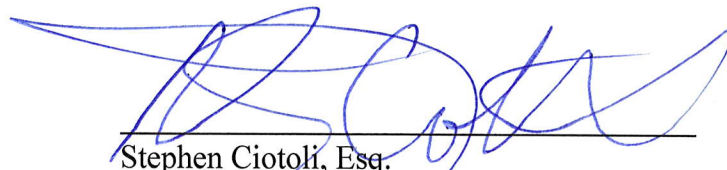
88. Plaintiff seeks damages and all forms of relief available.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter an award of damages in her favor in a sum to be determined according to proof and as provided by law, plus attorneys’ fees, costs and disbursements incurred in prosecuting this action, and such other and further relief as the court may deem just and proper.



Dated: February 6, 2019



Stephen Ciotoli, Esq.  
*Attorney for Plaintiff*  
GATTUSO & CIOTOLI, PLLC  
7030 East Genesee Street  
Fayetteville, New York 13066

## INDIVIDUAL VERIFICATION

STATE OF NEW YORK     )  
                                  )     ss.:  
COUNTY OF Onondaga     )

KAREN ODRZYWOLSKI, the Plaintiff herein, being duly sworn, deposes and says that she is the Plaintiff in the within action; that he has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes them to be true. The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Karen  
Karen Odrzywolski

Sworn to before me this  
5 day of February 2019

[Signature]  
Notary Public

