

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SUSAN O’HORO, M.D.,

Plaintiff,

v.

BOSTON MEDICAL CENTER
CORPORATION, BOSTON UNIVERSITY
MEDICAL CENTER RADIOLOGISTS,
INC., and JORGE SOTO, M.D.,

Defendants.

Civil Action No.: 1:20-cv-12290-GAO

**DEFENDANTS’ ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF’S COMPLAINT**

Defendants Boston Medical Corporation (“BMC”), Boston University Medical Center Radiologists, Inc. (“BUMCR”), and Jorge Soto, M.D. (“Dr. Soto”) (collectively, “Defendants”), by and through their undersigned counsel, hereby respond and assert defenses to the Complaint [ECF No. 1] of Plaintiff Susan O’Horo, M.D. (“Dr. O’Horo” or “Plaintiff”), as follows:

Introduction

1. Defendants admit only that Plaintiff is an interventional radiologist who worked at BMC as an employee of BUMCR, and deny the remaining allegations in Paragraph 1.
2. Denied.
3. Defendants admit only that Plaintiff expressed concerns to BMC regarding Dr. Higgins, which BMC promptly addressed. Answering further, the Massachusetts Department of Public Health (“DPH”) conducted a full investigation and determined that Plaintiff’s allegations regarding Dr. Higgins were unsubstantiated. Defendants deny the remaining allegations in paragraph 3.

4. Defendants admit only that Plaintiff's job title was Director of Quality & Safety in Interventional Radiology, and that Plaintiff's responsibilities included recommending improvements to quality and patient safety. Defendants deny the remaining allegations in paragraph 4.

5. Defendants admit only that Plaintiff complained about Dr. Higgins, including in a September 11, 2019 letter to Dr. Davidoff and BMC's Chief Risk Officer Scott Friedman. Defendants deny the remaining allegations in paragraph 5.

6. Defendants are without knowledge or information sufficient to admit or deny Plaintiff's allegations concerning her communications with state agencies. Stating further, DPH conducted a full investigation and determined that Plaintiff's allegations regarding Dr. Higgins were unsubstantiated. Defendants deny the remaining allegations in paragraph 6.

Parties

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

Jurisdiction and Venue

11. Paragraph 11 states a conclusion of law to which no response is required. If a response is required, Defendants admit only that the Complaint purports to assert a federal cause of action and that the Complaint alleges acts and/or omissions occurring within the Eastern Division of the District of Massachusetts, and deny the remaining allegations in paragraph 11.

12. Defendants admit only that Plaintiff filed a Charge with the MCAD, cross-filed with the EEOC. Defendants further admit that Plaintiff withdrew her charge from the MCAD and

that the EEOC issued a right-to-sue letter. Defendants deny the remaining allegations in paragraph 12.

Facts^[1]

13. Defendants admit only that Plaintiff is a practicing interventional radiologist and received board certification in diagnostic radiology in or about 2003. Defendants deny the remaining allegations in paragraph 13.

14. Defendants admit that Plaintiff is certified in Interventional Radiology and Diagnostic Radiology by the American Board of Radiology, was a Clinical Associate Professor of Radiology at Boston University School of Medicine, and was the only practicing interventional radiologist at BMC during her tenure with a fellowship in the Society of Interventional Radiology. Defendants are without knowledge or information sufficient either to admit or deny the remaining allegations in paragraph 14.

15. Defendants are without knowledge or information sufficient either to admit or deny the allegations in paragraph 15.

16. Defendants admit only that Dr. O'Horo was a member of the Society of Interventional Radiology at all times relevant to the Complaint, and are otherwise without knowledge or information sufficient to either admit or deny the remaining allegations in paragraph 16.

17. Defendants are without knowledge or information sufficient either to admit or deny the allegations in paragraph 17.

¹ The argumentative sub-headings under the "Facts" section of the Complaint purport only to summarize allegations in the Complaint and therefore require no response. If a response is required, each and every subheading is denied.

18. Defendants are without knowledge or information sufficient either to admit or deny the allegations in paragraph 18.

19. Denied. Stating further, Dr. O’Horo initially applied to a job posting that made no mention of a leadership position. Dr. Soto later created the position of Director of Quality and Safety for Dr. O’Horo.

20. Denied.

21. Defendants admit only that Dr. Vilvendhan served as the Chief of the Division of Interventional Radiology during the course of Plaintiff’s employment, and deny the remaining allegations in paragraph 21.

22. Denied. Stating further, the Vice Chair and Section Chief positions within the Department are held by an equal number of men and women.

23. Denied.

24. Admitted. Stating further, Defendants did not agree to purchase any specific software package as a condition of Dr. O’Horo’s accepting employment.

25. Admitted.

26. Defendants admit the allegations in the first sentence of paragraph 26. The remainder of paragraph 26 is denied.

27. Defendants admit the allegations in the first sentence of paragraph 27. Stating further, HIIQ software is not universally used in Interventional Radiology, and BMC was investigating alternative, similar software that would be compatible across all clinical departments. Defendants deny the remainder of paragraph 27.

28. Admitted. Stating further, Dr. Vilvendhan communicated this information to Dr. O'Horo in connection with her role as Director of Quality and Safety in Interventional Radiology, as Dr. Higgins had started working at BMC prior to Dr. O'Horo.

29. Denied.

30. Defendants admit only that quality and safety concerns were reported to Plaintiff as part of her duties as Director of Quality and Safety in Interventional Radiology. Defendants have no knowledge or information concerning statements allegedly made to Dr. O'Horo by individuals who are unidentified in the Complaint. Defendants deny the remaining allegations in paragraph 30.

31. Defendants respectfully decline to answer the allegations in paragraph 31 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501. Stating further, DPH found no deficiencies during its investigation of Plaintiff's allegations regarding failure to report certain clinical events.

32. Subject to and without waiver of the medical peer review privilege applicable to the allegations in paragraph 31, Defendants admit the allegations in paragraph 32.

33. Defendants respectfully decline to answer the allegations in paragraph 33 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501. Stating further, DPH found no deficiencies during its investigation of Plaintiff's allegations regarding failure to report certain clinical events.

34. Denied.

35. Defendants admit only that when Dr. Higgins first began working at BMC, concerns were raised by both male and female employees about his communication style, which improved over time. Defendants further admit that Dr. Soto met with a group of nurses in August of 2018. Defendants deny the remaining allegations in paragraph 35.

36. Admitted. Stating further, BMC addressed these concerns by placing Dr. Higgins in a focused professional practice evaluation (“FPPE”) program.

37. Denied.

38. Denied.

39. Denied. Stating further, (i) Defendants had no role in selecting Dr. Higgins for a visiting professorship in China; the decision was made by the host facility; and (ii) a BMC-sponsored visit to Argentina was offered to Dr. Leonardo Campos because the host faculty requested a radiologist with expertise in liver and oncologic interventions, which Dr. Campos had and which Plaintiff did not have.

40. Defendants admit only that the position was not discussed with Plaintiff. Defendants deny the remaining allegations in paragraph 40.

41. Denied.

42. Defendants admit only that Dr. Vilvendhan left BMC in June 2020. Stating further, several female candidates applied and were considered for the position, but the successful candidate was the only applicant who had the specific expertise needed for the position. Defendants deny the remaining allegations in paragraph 42.

43. Denied.

44. Defendants admit only that there was a miscommunication between Dr. Higgins and a female resident, which was resolved with Dr. Soto's intervention. Defendants deny the remaining allegations in paragraph 44.

45. Defendants admit only that the resident did not pursue a career in interventional radiology, but deny that this decision was due to Dr. Higgins. Defendants further admit that an anonymous reporting structure was in effect, but deny that it was established because of concerns related to Dr. Soto or Dr. Higgins. Defendants deny the remaining allegations in paragraph 45.

46. Defendants admit only that Plaintiff was frequently unhappy with her schedule, and deny the remaining allegations in paragraph 46.

47. Denied. Stating further, Dr. Vilvendhan requested that Dr. O'Horo be on call during the Columbus Day weekend in 2018 in order to relieve other attending physicians who had covered the bulk of the call schedule earlier in the year, including Dr. Vilvendhan. Dr. O'Horo declined the request, and ultimately was not scheduled.

48. Denied.

49. Defendants admit only that Plaintiff submitted vacation requests. Stating further, in the fall of 2018, scheduling became centralized within the Department of Radiology and the Senior Director of Radiology was assigned the task of scheduling for members of the Department. Ultimately, Dr. O'Horo was given permission to take vacation time during Christmas week in 2018, but she declined the opportunity. Defendants deny the remaining allegations in paragraph 49.

50. Denied.

51. Admitted.

52. Defendants admit only that Dr. O'Horo provided Dr. Higgins with feedback during the FPPE process, and deny the remaining allegations in paragraph 52.

53. Defendants admit only that Plaintiff met with Dr. Soto to voice her concerns about Dr. Higgins, and deny the remaining allegations in paragraph 53.

54. Denied.

55. Defendants admit only that Dr. Gonzalez informed Dr. Soto that he had witnessed an interaction between Dr. O'Horo and Dr. Higgins during which, in Dr. Gonzalez's view, both acted inappropriately. Defendants deny the remaining allegations in paragraph 55.

56. Defendants deny the allegations in the third sentence of paragraph 56. Defendants respectfully decline to answer the remaining allegations in paragraph 56 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501. Stating further, DPH found no deficiencies during its investigation of Plaintiff's allegations regarding failure to report certain clinical events.

57. Defendants admit only that Dr. Higgins's FPPE was temporarily placed on hold in August 2018. Defendants respectfully decline to answer the remaining allegations in paragraph 57 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

58. Defendants admit only that Dr. Higgins' FPPE was not completed by January 2020, and that it had been completed for two of the three interventional radiologists hired after implementation of the FPPE. Defendants deny the remaining allegations in paragraph 58.

59. Defendants are without knowledge or information sufficient to admit or deny the alleged statements of an unidentified “staff member.” Stating further, Defendants deny that Dr. Vilvendhan made the alleged remark and deny the remaining allegations in paragraph 59.

60. Defendants admit only that that Dr. O’Horo and Dr. Soto met in December of 2018 to discuss Dr. O’Horo’s concerns regarding Dr. Higgins, and that Dr. Soto advised Dr. O’Horo to discuss her concerns with Dr. Moses, BMC’s Director of Quality and Safety. Defendants deny the remaining allegations in paragraph 60.

61. Defendants admit only that Dr. O’Horo created a document purporting to track events involving Dr. Higgins. Stating further, the primary way that the Department tracked complications was through BMC’s internal risk management reporting system, known as “STARS,” which—unlike Dr. O’Horo’s ad-hoc Excel spreadsheet—facilitated collaboration between BMC physicians. HIIQ software is not universally used in Interventional Radiology, and BMC was investigating alternative software that could be used by all Hospital departments. Defendants deny the remaining allegations in paragraph 61.

62. Defendants respectfully decline to answer the allegations in paragraph 62 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

63. Defendants respectfully decline to answer the allegations in paragraph 63 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

64. Defendants respectfully decline to answer the allegations in paragraph 64 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

65. Subject to and without waiver of the medical peer review privilege applicable to the allegations in paragraphs 62-64, Defendants admit only that Dr. O'Brien was aware of this incident. Stating further, Dr. Moses brought it to Dr. O'Brien's attention. Defendants deny the remaining allegations in paragraph 65.

66. Defendants admit only that Dr. O'Horo met with Dr. Moses to discuss, in part, Dr. O'Horo's concerns regarding Dr. Higgins. Stating further, Dr. Moses also discussed concerns that Dr. O'Horo was unusually focused on, and unfairly targeting, Dr. Higgins. Dr. O'Horo met with Dr. Soto regularly, and Drs. Moses and Davidoff were aware of Dr. O'Horo's concerns about Dr. Higgins. Defendants deny the remaining allegations in paragraph 66.

67. Admitted. Stating further, although Dr. Soto needed to cancel a specific meeting due to a scheduling conflict, Dr. Soto was in continual communication with Dr. O'Horo, and was aware of the progress of Dr. Higgins' FPPE.

68. Defendants admit only that Drs. Moses and Davidoff discussed Dr. O'Horo's concerns regarding Dr. Higgins, and deny the remaining allegations in paragraph 68.

69. Denied.

70. Defendants deny the first, fourth, fifth, and seventh sentences of paragraph 70. Defendants respectfully decline to answer the remaining allegations in paragraph 70 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

71. Denied.

72. Defendants admit only that Dr. O'Horo's responsibility for reviewing the pre-procedure lab requirements policy was reassigned to Dr. Vilvendhan because of Dr. O'Horo's ineffectiveness in her role, and deny the remaining allegations in paragraph 72.

73. Defendants admit only that Dr. O’Horo was guaranteed one non-clinic day per week in order to carry out her duties as the Director of Quality and Safety, including ensuring the timely completion of the FPPE process. Stating further, no full-time interventional radiologists were entitled to a “fixed” academic day; the specific day was variable and assigned by the Senior Director of Radiology, who was responsible for all clinical scheduling. Defendants deny the remaining allegations in paragraph 73.

74. Defendants lack information and knowledge sufficient to either admit or deny what Dr. O’Horo had “previously seen” while at Brigham and Women’s Hospital. Defendants respectfully decline to answer the remaining allegations in paragraph 74 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

75. Subject to and without waiver of the medical peer review privilege applicable to the allegations in paragraph 74, denied. Stating further, Dr. Higgins had performed hundreds of successful biopsies at BMC at the time this incident occurred.

76. Defendants respectfully decline to answer the allegations in paragraph 76 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501. Stating further, DPH found no deficiencies during its investigation of Plaintiff’s allegations regarding failure to report certain clinical events.

77. Denied.

78. Denied.

79. Denied.

80. Denied. Stating further, the trial described in paragraph 80 was open to all interested physicians, and Dr. O'Horo did not express interest in the opportunity.

81. Denied. Stating further, neither Dr. Vilvdenhan nor BMC had control over who was invited to this conference, which was sponsored by a medical device manufacturer. Only one BMC interventional radiologist attended the conference.

82. Denied.

83. Defendants respectfully decline to answer the allegations in paragraph 83 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

84. Defendants admit only that a meeting occurred in which professionalism was discussed, including concerns that Dr. O'Horo had cursed in front of patients and members of the public. Defendants deny the remaining allegations in Paragraph 84.

85. Defendants lack sufficient knowledge or information to either admit or deny the allegations regarding whether a specific file from a shared computer was deleted, or regarding the contents of such file. Stating further, data regarding complications is typically extracted from BMC's STARS system, which is shared among all BMC departments. Defendants respectfully decline to answer the remaining allegations in paragraph 85 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

86. Denied.

87. Denied.

88. Denied.

89. Defendants admit only that an undergraduate student was tasked with this project. Stating further, Defendants deny that the task was “siphoned off” from Dr. O’Horo’s job duties. Defendants deny the remaining allegations in paragraph 89.

90. Denied.

91. Defendants admit only that Dr. O’Horo raised these concerns to Dr. Moses. Defendants deny that Dr. O’Horo’s concerns regarding Dr. Soto were grounded in fact, and otherwise deny the remaining allegations in paragraph 91.

92. Defendants respectfully decline to answer the allegations in paragraph 92 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

93. Subject to and without waiver of the medical peer review privilege applicable to the allegations in paragraph 92, Defendants admit only that Dr. O’Horo notified both Drs. Soto and Vilvendhan about a clinical incident involving Dr. Higgins, and that Dr. Vilvendhan reviewed the case at Dr. Soto’s request. Stating further, this task was appropriate for Dr. Vilvendhan to perform in light of his role as Chief of Interventional Radiology. Defendants deny the remaining allegations in paragraph 93.

94. Defendants admit only that Dr. O’Horo sent a letter dated September 11, 2019, and deny the remaining allegations in Paragraph 94.

95. Defendants admit only that Dr. Davidoff met with a group of radiologists in the fall of 2019 to address the group’s concerns about Dr. Soto’s leadership style. Further stating, the only female radiologist that met with Dr. Davidoff was Dr. O’Horo. Defendants deny the remaining allegations in Paragraph 95.

96. Denied.

97. Defendants admit only that Dr. O’Horo met with Dr. Davidoff and expressed concerns regarding Drs. Higgins and Soto. Defendants deny that the concerns raised by Dr. O’Horo were grounded in fact and deny the remaining allegations in paragraph 97.

98. Defendants deny the allegations in the third sentence of paragraph 98. Defendants respectfully decline to answer the remaining allegations in paragraph 98 on the ground that the basis for Defendants’ knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

99. Defendants admit only that Dr. Higgins was selected for the position of Medical Student Clerkship Director. Stating further, Dr. Higgins was selected for the position by Dr. Kitt Schaffer, the female Vice Chair of Education at BMC, for this role, given Dr. Higgins’ interest in medical student education. Dr. O’Horo never expressed interest in the role, which was not part of her duties as Director of Quality and Safety in Interventional Radiology. Defendants deny the remaining allegations in paragraph 99.

100. Defendants admit only that Dr. Ezra Burch replaced Dr. Higgins as Director for Early Specialization in Interventional Radiology only after Dr. Higgins accepted the position of Medical Student Clerkship Director. Stating further, Dr. O’Horo did not express interest in the role, which was not part of her duties as Director of Quality and Safety in Interventional Radiology. Defendants deny the remaining allegations in paragraph 100.

101. Denied.

102. Denied.

103. Since the Complaint lacks specificity as to the date on which Dr. Higgins allegedly “left early,” Defendants lack knowledge or information sufficient to either admit or deny the allegations in the second sentence of paragraph 103. Stating further, clinical shifts typically end at

5:00 p.m., and cases that come up after that time are generally the responsibility of the physician on call. Defendants deny the remaining allegations in paragraph 103.

104. Defendants admit only that Dr. O'Horo voluntarily chose to not take on cases involving more complex procedures, which was consistent with her clinical background and experience, and deny the remaining allegations in paragraph 104.

105. Defendants respectfully decline to answer the allegations in paragraph 105 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501. Stating further, DPH found no deficiencies during its investigation of Plaintiff's allegations regarding failure to report certain clinical events.

106. Defendants respectfully decline to answer the allegations in paragraph 106 on the ground that the basis for Defendants' knowledge and information is protected from disclosure by the medical peer review privilege, G.L. c. 111, §§ 204, 205. *See* Fed. R. Evid. 501.

107. Denied. Stating further, Dr. Moses made the request to Dr. Vilvendhan, which was based on a selection of cases that had been identified by Dr. O'Horo.

108. Defendants admit only that a meeting took place in November of 2019 attended by Drs. O'Horo, McAneny, and Vilvendhan. Defendants deny the remaining allegations in paragraph 108.

109. Defendants admit only that Dr. Moses announced that Dr. Vilvendhan would observe interventional radiologists, which was consistent with Dr. Vilvendhan's duties as Division Chief. Defendants deny the remaining allegations in paragraph 109.

110. Defendants admit only that, during this meeting, Dr. Moses communicated a plan to hire an outside consulting firm to conduct an external investigation. Stating further, the firm

selected appointed its own investigator, which selection was made without regard to gender. Defendants deny the remaining allegations in paragraph 110.

111. Defendants admit only that Dr. O'Horo wrote to Drs. Moses and Davidoff expressing the concerns alleged in paragraph 111. Defendants deny the remaining allegations in paragraph 111.

112. Denied.

113. Defendants admit only that Dr. Gross received additional funding and academic time related to her grant. Stating further, Dr. O'Horo never provided the necessary budgeting information to receive any such funding or increased academic time. Furthermore, Dr. Soto does not decide who receives academic time from such grants, or how much academic time is provided. Defendants deny the remaining allegations in paragraph 113.

114. Defendants are without knowledge or information sufficient to admit or deny Plaintiff's allegations concerning her correspondence with DPH or the Board of Registration in Medicine, and deny the remaining allegations in paragraph 114.

115. Defendants admit only that DPH conducted a full investigation and determined that Plaintiff's allegations were unsubstantiated. Defendants are without knowledge or information sufficient to admit or deny Plaintiff's allegations concerning her correspondence with DPH. Defendants deny the remaining allegations in paragraph 115.

116. Defendants admit only that Dr. Vilvendham, within his role as Chief of Division of Interventional Radiology, began reviewing major procedures by each physician within the division, including Dr. O'Horo. Further stating, this review was in effect prior to DPH's investigation. Defendants deny the remaining allegations in paragraph 116.

117. Defendants admit only that Dr. O’Horo did not attend the meeting. Defendants specifically deny that Dr. O’Horo was not invited, and deny the remaining allegations in paragraph 117.

118. Denied. Stating further, Dr. O’Horo stopped speaking to Dr. Vilvendhan prior to the DPH investigation.

119. Admitted.

120. Defendants state only that they have no control over the contents of Board of Registration in Medicine profiles, and deny the remaining allegations in paragraph 120.

121. Defendants admit only that BMC’s Human Resources department devised a plan to conduct one-on-one meetings with IR employees, and deny the remaining allegations in paragraph 121.

122. Defendants admit only that Dr. Higgins continues to be employed at BMC, and that he took medical leave to recover from a hand injury. Stating further, no concerns regarding Dr. Higgins’ clinical performance have been reported since Dr. O’Horo left BMC. Defendants deny the remaining allegations in paragraph 122.

COUNT I
Title VII, 42 U.S.C. §2000e-2(a)
(All Defendants)

123. Defendants reallege and reincorporate by reference their responses to paragraphs 1 through 122 as if fully set forth herein.

124. Denied.

125. Denied.

126. Denied.

COUNT II
M.G.L. c. 151B, §4
(All Defendants)

127. Defendants reallege and reincorporate by reference their responses to paragraphs 1 through 126 as if fully set forth herein.

128. Denied.

129. Denied.

130. Denied.

COUNT III
M.G.L. c. 151B, §4(5)
(Dr. Soto)

131. Defendants reallege and reincorporate by reference their responses to paragraphs 1 through 130 as if fully set forth herein.

132. Denied.

133. Denied.

COUNT IV
VIOLATION OF G.L. c. 149, § 187
(Against BMC)

134. Defendants reallege and reincorporate by reference their responses to paragraphs 1 through 133 as if fully set forth herein.

135. Admitted.

136. Admitted.

137. Denied.

138. Defendants admit only that Plaintiff raised internal complaints regarding Dr. Higgins, including a September 11, 2019 letter to BMC's Chief Medical Officer and Chief Risk Officer. Further stating, Defendants have no knowledge or information sufficient to admit or deny Plaintiff's allegations regarding her communications with, or her participation in investigations

conducted by, state agencies. Answering further, after conducting a full investigation, the DPH determined that Plaintiff's allegations were unsubstantiated. Defendants deny the remaining allegations in paragraph 138.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

COUNT V
RESPONDEAT SUPERIOR
(Against BUMC-Radiologists)

143. Defendants reallege and reincorporate by reference their responses to paragraphs 1 through 142 as if fully set forth herein.

144. Defendants admit only that Dr. Soto was an employee of BUMCR at all times relevant to the Complaint, and deny the remaining allegations in paragraph 144.

PRAYERS FOR RELIEF

Defendants deny that Plaintiff is entitled to any relief sought in her Complaint.

JURY DEMAND

Defendants admit that Plaintiff requests a jury trial on all issues so triable. However, Plaintiff's demand for a jury trial is a legal conclusion to which no responsive pleading is required and, therefore, the remainder of the allegations in the demand for a jury trial, or inferences arising therefrom, are denied.

GENERAL DENIAL

Defendants deny each and every allegation of fact, conclusion of law, or other matter contained in the Complaint that has not been expressly admitted herein.

AFFIRMATIVE AND ADDITIONAL DEFENSES

Subject to and without waiving the foregoing specific and general denials, Defendants assert the following separate and distinct affirmative defenses and additional defenses to Plaintiff's Complaint and each cause of action therein and pray for judgment as set forth below. Defendants also hereby give notice that they intend to rely upon such other and further defenses as may become available during investigation and discovery in this action. Discovery is ongoing, therefore Defendants reserve the right to amend this Answer to assert additional defenses as new information becomes available.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the doctrine of unclean hands.

THIRD DEFENSE

Plaintiff has waived the right to, and is estopped from, asserting the claims alleged in her Complaint by reason of her conduct and actions.

FOURTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the doctrine of laches.

FIFTH DEFENSE

Unlawful or wrongful acts, if any, taken by Defendants' agents or employees were outside the course and scope of their authority and such acts, if any, were not authorized, ratified, or condoned by Defendants, nor did Defendants know nor should they have known of such acts.

SIXTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by applicable statute(s) of limitations.

SEVENTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, because Plaintiff failed to exhaust her administrative remedies.

EIGHTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the equitable defense of bad faith.

NINTH DEFENSE

Plaintiff was not subjected to any adverse action affecting the terms and conditions of her employment.

TENTH DEFENSE

Plaintiff's damages, if any, are the proximate result of independent, intervening, or superseding causes, including without limitation, the conduct of Plaintiff or others, for which or for whom Defendants were not and are not responsible. Therefore, Plaintiff's damages, if any, are unrelated to Defendants' conduct and the Court must reduce or deny any judgment rendered against Defendants accordingly.

ELEVENTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, because Plaintiff failed to comply with the reasonable expectations of Defendants and/or follow Defendants' reasonable instructions and/or policies.

TWELFTH DEFENSE

To the extent any act or omission on their part gave rise to any violation of any applicable law, which is expressly denied, such act or omission was made in good faith, and Defendants had reasonable grounds that the act or omission was not a violation of any law. Accordingly, Plaintiff

is barred from recovering damages, penalties, and/or attorneys' fees pursuant to any applicable law as alleged in the Complaint.

THIRTEENTH DEFENSE

To the extent that Plaintiff experienced an adverse employment action, which is specifically denied, Defendants would have taken the same action against Plaintiff even in the absence of any alleged protected activity.

FOURTEENTH DEFENSE

Defendants took prompt and appropriate corrective action in response to any complaints or stated concerns regarding the workplace, patient safety, or any other matter concerning Plaintiff's employment, thereby satisfying all legal obligations.

FIFTEENTH DEFENSE

Defendants reserve the right to assert that evidence of any misconduct discovered subsequent to Plaintiff's voluntary resignation bars or limits any remedy in whole or in part.

SIXTEENTH DEFENSE

Defendants had no knowledge that Plaintiff was subject to retaliation and/or discrimination as alleged in the Complaint.

SEVENTEENTH DEFENSE

Plaintiff's Title VII claims against Dr. Soto are barred by *Fantini v. Salem State Coll.*, 557 F.3d 22 (1st Cir. 2009).

EIGHTEENTH DEFENSE

Plaintiff's causes of action are barred, in whole or in part, by the same-actor inference.

NINETEENTH DEFENSE

Plaintiff did not engage in any protected activity under M.G.L. c. 149, § 187.

TWENTIETH DEFENSE

Plaintiff failed to give Defendants a reasonable opportunity to correct any purportedly deficient activity, policy, or practice.

TWENTY-FIRST DEFENSE

All or part of the damages sought by Plaintiff are unavailable as a matter of law.

TWENTY-SECOND DEFENSE

Plaintiff lacked a reasonable belief that Defendants violated any law, rule, regulation promulgated pursuant to law, or professional standard of practice.

TWENTY-THIRD DEFENSE

To the extent Plaintiff reasonably believed that Defendants violated any law, rule, regulation promulgated pursuant to law, or professional standard of practice, which is expressly denied, Plaintiff lacked a reasonable belief that such violation posed a risk to public health.

TWENTY-FOURTH DEFENSE

Plaintiff has failed to deliver a copy of the Complaint to the attorney general as required by G.L. c. 149, § 187(d)(5).

TWENTY-FIFTH DEFENSE

The Complaint is, in whole or part, without basis in law or fact, entitling Defendants to their reasonable attorneys' fees and court costs.

RESERVATION OF RIGHTS

Defendants hereby reserve the right to amend their answer and/or assert additional defenses as Plaintiff's claims are investigated in the course of this litigation.

WHEREFORE, having fully answered the allegations in Plaintiff's Complaint, the Defendants hereby respectfully pray that:

1. Plaintiff recover nothing in this matter;
2. Plaintiff not be awarded any form of legal or equitable relief;
3. the Court dismiss this action with prejudice;
4. the Court enter judgment for Defendants and against Plaintiff on all counts of the Complaint;
5. the Court award Defendants their attorneys' fees and costs, pursuant to G.L. c. 149, § 187(e)(1) and other applicable laws, regulations, or court rules; and
6. the Court award such other and further relief is just and proper.

* * *

Dated: March 1, 2021

Respectfully submitted,

BOSTON MEDICAL CENTER CORP.,
BOSTON UNIVERSITY MEDICAL CENTER
RADIOLOGISTS, INC., & JORGE SOTO, M.D.,

By their counsel,

/s/ David C. Kurtz

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CERTIFICATE OF SERVICE

I, David C. Kurtz, hereby certify that on this 1st day of March 2021, a true and correct copy of the foregoing document was electronically filed the foregoing with the Clerk of Court through the Court's CM/ECF system, and served upon counsel of record through the same.

/s/ David C. Kurtz

David C. Kurtz