

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Case Type: Employment

Kaya Latzke,

Case No.: 19HA-CV-20-3089

Plaintiff,

v.

**ANSWER**

Northfield Hospitals &amp; Clinics,

Defendant.

COMES NOW Defendant Northfield Hospitals & Clinics (“Defendant”) for its Answer to the Complaint of Plaintiff Kaya Latzke (“Plaintiff”) states and alleges as follows:

Defendant generally denies each and every allegation, matter and thing contained in the Complaint, including the introductory paragraphs, except as hereinafter admitted, qualified or otherwise stated.

### **PARTIES**

1. Upon information and belief, Defendant admits the allegations of Paragraph 1 of the Complaint.
2. Defendant admits the allegations of Paragraph 2 of the Complaint.
3. With respect to the allegations of Paragraph 3 of the Complaint, Defendant asserts that the referenced statute speaks for itself. To the extent the allegations in Paragraph 3 are inconsistent with the language of the referenced statute, said allegations are denied.

### **JURISDICTION AND VENUE**

4. Defendant admits the allegations of Paragraph 4 of the Complaint.
5. Defendant admits the allegations of Paragraph 5 of the Complaint.

## FACTS

6. Defendant admits the allegations of Paragraph 6 of the Complaint.

7. Defendant denies the allegations of Paragraph 7 of the Complaint.

8. With respect to the allegations of Paragraph 8 of the Complaint, Defendant admits that Plaintiff learned of what she believed to be issues related to clinical standards, including allegedly exceeding recommended procedure times, conducting piecemeal removal of colorectal polyps with a forceps instead of a snare, and having patients who had polyps removed via piecemeal return for follow-up in three to five years, instead of six to 12 months. Defendant denies the remainder of the allegations in Paragraph 8 of the Complaint.

9. With respect to the allegations of Paragraph 9 of the Complaint, Defendant admits that Plaintiff conducted a survey of colonoscopy data for each physician from January 1 to May 10, 2019. Defendant affirmatively alleges that the survey was requested by Defendant's management. This survey speaks for itself. To the extent the allegations in Paragraph 9 are inconsistent with the survey, said allegations are denied.

10. With respect to the allegations of Paragraph 10 of the Complaint, Defendant admits that Plaintiff first brought up her concerns to Chief Operating Officer, Jerry Ehn. Defendant denies the remainder of the allegations in Paragraph 10 of the Complaint.

11. With respect to the allegations of Paragraph 11 of the Complaint, Defendant admits upon Ehn's approval Plaintiff reported the referenced data to Dr. Ericson and Plaintiff further reported the events of the meeting in an email the following day. Defendant denies the remainder of the allegations in Paragraph 11 of the Complaint.

12. With respect to the allegations of Paragraph 12 of the Complaint, upon information and belief, Defendant admits that Plaintiff contacted the ASGE and received an email from the ASGE on or around June 11, 2019. This email speaks for itself. To the extent the

allegations in Paragraph 12 are inconsistent with this email, said allegations are denied. Defendants further admit that Plaintiff sent emails to Ehn, Hayes, and Langford on or around June 11, 2019 and June 13, 2019. These emails speaks for themselves. To the extent the allegations in Paragraph 12 are inconsistent with these emails, said allegations are denied.

13. With respect to the allegations of Paragraph 13 of the Complaint, upon information and belief, Defendant admits that Plaintiff received reports that certain physicians were requiring an amount of abdominal pressure during colonoscopies that Plaintiff deemed excessive. Defendant further admits that Plaintiff sent an email on or around June 27, 2019 to physicians regarding abdominal pressure. This email speaks for itself. To the extent the allegations in Paragraph 13 are inconsistent with this email, said allegations are denied. Defendant denies the remainder of the allegations of Paragraph 13 of the Complaint.

14. With respect to the allegations of Paragraph 14 of the Complaint, Defendant admits that Dr. Ericson responded to Plaintiff's email on or around July 2, 2019. Defendant further admits that Plaintiff sent an email to Ehn on or around July 2, 2019 containing excerpts from two safety write ups. These emails speak for themselves. To the extent the allegations in Paragraph 14 are inconsistent with these emails, said allegations are denied.

15. With respect to the allegations of Paragraph 15 of the Complaint, Defendant admits that Plaintiff emailed Ehn, Hayes, Langford, and Director of Quality Ann Reuter on or around July 9, 2019. This email speaks for itself. To the extent the allegations in Paragraph 15 are inconsistent with this email, said allegations are denied.

16. With respect to the allegations of Paragraph 16 of the Complaint, Defendant admits that Plaintiff emailed Ehn, Hayes, and Internal Counsel Laura Peterson on or around July 17, 2019. This email speaks for itself. To the extent the allegations in Paragraph 16 are

inconsistent with this email, said allegations are denied. Upon information and belief, Defendant admits the remainder of the allegations in Paragraph 16 of the Complaint.

17. With respect to the allegations of Paragraph 17 of the Complaint, Defendant admits that Plaintiff reported to Reuter her concern that patients that had piecemeal polyps removed were not being timely recalled for follow-up. Defendant is without sufficient information to admit or deny the remainder of the allegations of Paragraph 17 and therefore denies same.

18. With respect to the allegations of Paragraph 18 of the Complaint, Defendant admits that Plaintiff met with HR Executive Vicki Stevens. Defendant further admits that Stevens sent Plaintiff an email on or around August 23, 2019. This email speaks for itself. To the extent the allegations in Paragraph 18 are inconsistent with this email, said allegations are denied.

19. With respect to the allegations of Paragraph 19 of the Complaint, Defendant admits that Plaintiff met with Ehn on or around August 26, 2019 to discuss concerns regarding Dr. Marek's credentialing. Defendant further admits that Plaintiff sent an email to Ehn on or around August 27, 2019 regarding Dr. Marek's credentialing. This email speaks for itself. To the extent the allegations in Paragraph 19 are inconsistent with this email, said allegations are denied. Defendant denies the remainder of the allegations of Paragraph 19 of the Complaint.

20. Defendant admits the allegations of Paragraph 20 of the Complaint.

21. With respect to the allegations of Paragraph 21 of the Complaint, upon information and belief, Defendant admits that Plaintiff emailed ASGE on or around September 23, 2019. This email speaks for itself. To the extent the allegations in Paragraph 21 are inconsistent with this email, said allegations are denied.

22. With respect to the allegations of Paragraph 22 of the Complaint, upon information and belief, Defendant admits that Plaintiff received an email from ASGE on or around September 26, 2019. This email speaks for itself. To the extent the allegations in Paragraph 22 are inconsistent with this email, said allegations are denied.

23. With respect to the allegations of Paragraph 23 of the Complaint, Defendant admits that Plaintiff met with Peterson on or about October 7, 2019 to review data Plaintiff had collected regarding Dr. Ericson and Plaintiff's concerns that Dr. Ericson was not allegedly not following ASGE's standard of care. Defendant denies the remainder of the allegations of Paragraph 23 of the Complaint.

24. With respect to the allegations of Paragraph 24 of the Complaint, Defendant admits that a meeting between Plaintiff, Langford, Reuter, Ehn, Hayes and Peterson took place. Defendant affirmatively states that the purpose of the meeting was to discuss Plaintiff's belief that certain patients might require earlier follow-up visits. Defendant admits that another meeting was scheduled for October 24, 2019. Defendant denies the remainder of the allegations of Paragraph 24 of the Complaint.

25. With respect to the allegations of Paragraph 25 of the Complaint, Defendant admits that a decision was made to advise certain patients that they were due for a follow-up sooner than initially recommended. Defendant further admits that a draft of this letter was circulated on or around October 16, 2019. Defendant denies the remainder of the allegations of Paragraph 25 of the Complaint.

26. With respect to the allegations of Paragraph 26 of the Complaint, Defendant admits that a meeting took place on or around October 24, 2019 to continue the discussion regarding calling back patients that have had piecemeal polypectomies. Defendant further admits

that Plaintiff distributed numerous written materials at this meeting and expressed her concerns regarding Dr. Ericson's use of the piecemeal technique. Defendant denies the remainder of the allegations of Paragraph 26 of the Complaint.

27. With respect to the allegations of Paragraph 27 of the Complaint, Defendant admits that Plaintiff emailed Ehn on or around November 11, 2019 and included an attachment titled "Piecemeal Polypectomies graph." This email and attachment speak for themselves. To the extent the allegations of Paragraph 27 are inconsistent with these documents, said allegations are denied.

28. With respect to the allegations of Paragraph 28 of the Complaint, Defendant admits that Ehn emailed Plaintiff on or around November 11, 2019. This email speaks for itself. To the extent the allegations of Paragraph 28 are inconsistent with this email, said allegations are denied. Defendant denies the remainder of the allegations of Paragraph 28 of the Complaint.

29. With respect to the allegations of Paragraph 29 of the Complaint, Defendant admits that a meeting was held on or around November 12, 2019 to discuss Dr. Saterbak's report that information regarding recalling patients following piecemeal polypectomies was unclear. Defendant further admits that Dr. Saterbak recommended that patients who had piecemeal polyps removed should be recalled within 12 months and that a discussion followed regarding how best to notify such patients of the need to return for a follow-up visit. Defendant denies the remainder of the allegations of Paragraph 29 of the Complaint.

30. Defendant admits the allegations of Paragraph 30 of the Complaint. Defendant affirmatively alleges that Plaintiff's position was restructured as part of an ongoing budgetary process that began in April of 2019.

31. With respect to the allegations of Paragraph 31 of the Complaint, Defendant admits that Plaintiff met with Stevens on November 21, 2019. Defendant denies that Plaintiff made a complaint of retaliation. Defendant admits that Stevens confirmed that Plaintiff's position was restructured as a cost-saving measure warranted by ongoing budgetary needs.

32. With respect to the allegations of Paragraph 32 of the Complaint, Defendant admits that Plaintiff met with HR Director Jeff Mutz on or around November 12, 2019. Defendant denies the remainder of the allegations of Paragraph 32 of the Complaint.

33. With respect to the allegations of Paragraph 33 of the Complaint, Defendant admits that a meeting took place on or around January 13, 2020 regarding numerous topics, including but not limited to, potential videotaping of procedures. Defendant denies the remainder of the allegations of Paragraph 33 of the Complaint.

34. With respect to the allegations of Paragraph 34 of the Complaint, Defendant admits that Plaintiff sent a follow-up email to Mutz on or around January 15, 2020. This email speaks for itself. To the extent the allegations of Paragraph 34 are inconsistent with this email, said allegations are denied. Defendant further admits that Plaintiff met with Mutz around January 16, 2020 to further discuss her concerns, and Mutz encouraged Plaintiff to focus on what she could control. Defendant denies the remainder of the allegations of Paragraph 34 of the Complaint.

35. With respect to the allegations of Paragraph 35 of the Complaint, Defendant admits that Plaintiff emailed a list compiled by Dr. Saterbak of patients that needed to be recalled to members of administration on or about January 16, 2020. This email speaks for itself. To the extent the allegations of Paragraph 35 are inconsistent with this email, said allegations are denied.

36. With respect to the allegations of Paragraph 36 of the Complaint, Defendant admits that Plaintiff met with Hayes and Langford on or around January 18, 2020 to discuss the results of the culture survey that was taken in October 2019. This survey speaks for itself. To the extent the allegations of Paragraph 36 are inconsistent with this survey, said allegations are denied. Defendant denies the remainder of the allegations of Paragraph 36 of the Complaint.

37. With respect to the allegations of Paragraph 37 of the Complaint, Defendant admits that Plaintiff and Peterson exchanged emails on or around January 30, 2020 and February 4, 2020. These emails speak for themselves. To the extent the allegations of Paragraph 37 are inconsistent with these emails, said allegations are denied.

38. Defendant admits the allegations of Paragraph 38 of the Complaint. Defendant affirmatively alleges that upon termination of any employee, Defendant's protocol includes escorting the terminated employee from the premises and arranging for the delivery of personal items.

39. Defendant admits the allegations of Paragraph 39 of the Complaint. Defendant affirmatively alleges the posting for a part-time nursing position for the Endoscopy Clinic included a rate of compensation that was significantly less than what Plaintiff had been earning in her role as the Manager /Floor Nurse for the Endoscopy Clinic.

40. Defendant denies the allegations of Paragraph 40 of the Complaint.

41. Defendant denies the allegations of Paragraph 41 of the Complaint.

**COUNT ONE**  
**RETALIATION IN VIOLATION OF**  
**THE MINNESOTA WHISTLEBLOWER ACT ("MWA")**

42. Defendant denies the allegations of Paragraph 42 of the Complaint.



43. With respect to the allegations of Paragraph 43 of the Complaint, Defendant asserts that the referenced statute speaks for itself. To the extent the allegations in Paragraph 43 are inconsistent with the language of the referenced statute, said allegations are denied.

44. With respect to the allegations of Paragraph 44 of the Complaint, Defendant asserts that the referenced statute speaks for itself. To the extent the allegations in Paragraph 44 are inconsistent with the language of the referenced statute, said allegations are denied.

45. Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant denies the allegations of Paragraph 46 of the Complaint.

47. Defendant denies the allegations of Paragraph 47 of the Complaint.

48. Defendant denies the allegations of Paragraph 48 of the Complaint.

49. Defendant denies the allegations of Paragraph 49 of the Complaint.

50. Defendant denies the allegations of Paragraph 50 of the Complaint.

51. Defendant denies the allegations of Paragraph 51 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

For its affirmative defenses, Defendant alleges the following:

1. Plaintiff has failed to state a claim against Defendant upon which relief may be granted.

2. Plaintiff's claims are barred or otherwise limited to the extent that she failed to mitigate her damages.

3. If Plaintiff sustained any damages as alleged in the Complaint, such damages were caused by or contributed to by acts, omissions, fault, or other wrongful or improper conduct of Plaintiff.

4. Plaintiff's claims are barred because her damages, if any, were caused by the actions of others over whom Defendant has no authority or control, and not by Defendant.

5. Plaintiff's claims are barred, in whole or in part, by the doctrine of after acquired evidence.

6. In order to preserve the defenses pending further discovery, Defendant incorporates by reference all affirmative defenses required to be asserted under the Minnesota Rules of Civil Procedure. Defendant also reserves the right to assert any of the defenses that may become available during the trial of this matter and hereby reserves its right to raise such defenses in the future.

### **RELIEF**

WHEREFORE, Defendant prays for relief as follows:

1. For an Order dismissing Plaintiff's Complaint in its entirety and with prejudice;
2. For an award of costs and disbursements, including attorneys' fees incurred by Defendant as permitted by law; and
3. For such other relief as the Court deems just and equitable.

### **FOLEY & MANSFIELD, PLLP**

Dated: October 5, 2020

By: s/ Lisa M. Lamm Bachman

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### **ATTORNEYS FOR DEFENDANT**

### **ACKNOWLEDGMENT**

The party upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledges that sanctions may be imposed for a violation of Minn. Stat. § 549.211.

Lisa M. Lamm Bachman

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