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APR 09 2013

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #6

ORISTELA LOVE,
PLAINTIFF,

VS.

**NORTH HUDSON COMMUNITY
ACTION CORPORATION, CHRIS
IRIZARRY, JOHN DOES 1-10, AND XYZ
CORP. 1-10,**
DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: L-1852-11

CIVIL ACTION

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS AND
PLAINTIFF'S RESPONDING
STATEMENT OF DISPUTED
MATERIAL FACTS SUBMITTED
PURSUANT TO R. 4:46-2(b)**

Plaintiff, Oristela Love, (hereinafter "Plaintiff" or "Love") by and through her undersigned attorneys, hereby submits the following Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Responding Statement of Disputed Material Facts.

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Admitted.

2. Denies and avers further that Irizarry served as NHCAC's President/CEO from March 2006 (CI Tr. 14:15-20)¹, until, on information and belief, March 4, 2013 when he resigned from his position at NHCAC. (Foner Cert., Ex. A).
3. Agrees and avers further that according to NHCAC's website, Shababb replaced Irizarry as the interim President and CEO (<http://www.nhcac.org/about-us/board-of-directors.html>).
4. Agrees that McDonough was NHCAC's Director of Clinical Services from 2004 until she became the COO, and that she served as COO until March 2012, but denies that McDonough became COO prior to April 2011, as Shababb served as the COO until April 2011 (Defendants' Statement of Facts, ¶3).
5. Agrees, and avers further that McDonough also had the power to discipline Plaintiff. (MM Tr. 31:7-10).
6. Denies the characterization of Plaintiff's testimony and avers that Plaintiff clearly testified to the extreme change in McDonough's behavior that occurred after Plaintiff's whistleblowing behavior in April 2010, the retaliatory nature of which was evident in that it went far beyond "communication" issues, was "totally different" from what happened in the past, and for the first time put plaintiff in fear of losing her job and lose her job. (Pl. Tr. 160:11-24; 378:11-18; 400:23-401:13).
7. Admitted.
8. Admitted.

¹ Plaintiff has used the same abbreviations to refer to the deposition transcripts as Defendants. The deposition transcript pages that are referred to herein and in Plaintiff's Brief are annexed to the Certification of Francine Foner, dated April 8, 2013, submitted herewith in opposition to Defendants' Motion for Summary Judgment ("Foner Cert.").

9. Admitted that Plaintiff had an article published regarding the subject of Rules and Procedures for Medical Records and avers further that the referenced testimony does not reflect that the article was so entitled. (Pl. Tr. 13:16-18).
10. Denied as the paragraph refers to a document that speaks for itself and the document does not so state. (Foner Cert., Ex. B).
11. Admitted.
12. Admitted, except denied as to the allegation that Plaintiff was “tasked” with assessing NHCAC’s recordkeeping system and avers further that the referenced testimony of Plaintiff does not reflect the same.
13. Admitted.
14. Admitted.
15. Admitted that Plaintiff so stated and that plaintiff acknowledged receipt of the employee handbook, but as to the contents of the documents, the same speak for themselves.
16. Admitted.
17. Admitted.
18. Defendants misstate Plaintiff’s testimony. Admitted that Plaintiff testified that she has disciplined, suspended and terminated employees, but denied that she has disciplined “several” or any other number of employees (Pl. Tr. 190:23-191:3), and denied that she recommend terminations of several employees. (Pl. Tr. 190:14-22).
19. Admitted.
20. Admitted.
21. Admitted and avers that Plaintiff also testified that her role was to check “Just it was there. Not the quality of the documentation.” (Pl.Tr. 99:12-13).

22. Admitted.
23. Admitted and avers that Plaintiff also testified that her responsibility was “Not to write a conclusion. Just to investigate” and that she did not recall ever having made any report or put anything in writing concerning any investigation of an alleged HIPAA violation. (Pl. Tr. 34:1-4 and 15-17).
24. Admitted except as to the characterization that McDonough “stripped” Plaintiff of that duty. Rather, Plaintiff testified that she did not know why, and thus who decided, that McDonough should start to prepare the budget, (Pl. Tr. 31:20-24) and avers further that that none of the facts stated in this paragraph are material.
25. Admitted and avers that Plaintiff was not responsible for a qualitative review of medical records. (Pl. Tr. 122:14-123:1; 380:17-25).
26. Admitted and avers that Plaintiff testified further that nonclinical and clinical information may be contained in a patient’s record and that the clinical information contained in a medical record included “documents that contain references to diagnostic testing, lab work, treatment, notes” (Pl. Tr. 24:1-12) and that she was not responsible for the qualitative review of the clinical data in the medical record (Pl. Tr. 122:14-123:1; 380:17-25) and that she “would never have been involved in documenting the care that a clinical person rendered.” (Pl. Tr. 35:18-21).
27. -31. Admitted that had some problems with McDonough and verbally spoke with Mr. Irizarry about changing her reporting structure prior to September 2009, and avers that Plaintiff clearly testified to the extreme change in McDonough’s behavior that occurred after Plaintiff’s whistleblowing behavior in April 2010, the retaliatory nature of which was evident in that it went far beyond “communication” issues, was “totally different” from what

happened in the past, and for the first time put plaintiff in fear of losing her job and lose her job. (Pl. Tr. 160:11-24; 378:11-18; 400:23-401:13). Plaintiff further avers that such retaliatory conduct prompted Plaintiff to make her first formal written request to Irizarry have her reporting structure changed, to which she received no response from Irizarry. (Pl. Tr. 176:20-177:9). Also, see response to 6.

32. Admitted as to the time period before September 2009. (Pl. Tr. 64:17-21).

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted. Also, see response to 6.

37. Denies that Plaintiff ever “demanded” an increase in her compensation, admits that she requested increases in compensation, and that the request made in September 2009 was denied (Pl. Tr. 51:24-52:4; 75:7-16), and avers that Plaintiff did receive an increase in compensation at the end of 2009. (Pl. Tr. 77:13-79:5).

38. Admitted that Plaintiff so testified. Also, see response to 6.

39. Denied. The statements are intentionally taken out of context and results in misleading the Court. Plaintiff avers that Plaintiff testified that she did not remember the date when EMR was implemented and that Plaintiff further testified that after the retaliatory warning in April 2010, McDonough then further retaliated by refusing to send Plaintiff to EMR training as reflected by the August 2010 email exchanges with Mr. Irizarry after she spoke with him in July 2010, which as Defendants state in paragraph 40, was the only time that she spoke with Irizarry about the issue, not in 2009. (Pl. Tr. 42:11-43:8; 179:15-183:10, WHH Cert., Ex. L).

40. Admits, except that denies that Irizarry was not involved in the decision to deny Plaintiff EMR training. As Ms. McDonough testified:

Q. What about Mr. Irizarry? Did he have an involvement in denying Oristela's request to attend the training?

A. Of course.

(MM Tr. 110; 15-18). Also, see response to 39.

41. With respect to the first sentence, admitted that Plaintiff sent an email to McDonough requesting to be sent to the EMR training and she replied, which emails are included within Ex. L to the Certification of William H. Healey. As to the content of the emails, the documents speak for themselves, With respect to the second sentence Plaintiff admits only that a McDonough testified that a decision was made to send the two named individuals to the EMR training, but not when that such decision was made. (MM Tr. 108:21-109:2). Plaintiff further avers that Shababb testified that Plaintiff "in her position, with her responsibility, should have been sent to the training." (MS Tr. 94:23-95:1). Plaintiff further avers that Irizarry testified that it was "appropriate for Ms. Love to ask to be sent for certification training" and "I do believe that at some point she should have been attending these trainings." (CI Tr. 120:18-19 and 121:6-8).

42. Admits that McDonough testified that there was to be in-house training, but avers that Plaintiff never received the EMR training session in house. (Pl. Tr. 183:5-10). Plaintiff avers further that the individuals who attended the training were not as qualified to instruct employees in-house as the trainers at the outside training seminar and NHCAC would not be able to provide Plaintiff with any certification as she would have received has she attended the outside training. (MS Tr. 94:4-10).

43. With respect to the first sentence, admitted as to the email referenced being sent, and as to its contents, the document speaks for itself. With respect to the second sentence denied. Plaintiff avers that she testified only that the same was stated in an email from Maureen, but has no firsthand knowledge of that fact. (Pl. Tr. 43:25-44:1).
44. Admitted, but denies that such fact is material.
45. Admitted.
46. Admitted that Plaintiff testified that she received increases in compensation for “exceeds expectations” ratings.
47. Admitted.
48. Admitted for the time period prior to Plaintiff’s whistleblowing activity in April 2010.
49. Admitted for the 2008 and 2009 evaluations.
50. Admitted that NHCAC received the referenced letter. As to its contents, the document speaks for itself
51. See response to 50.
52. Denies to the extent that Defendants contend that Plaintiff’s response was in any way related to the Horizon Letter. Defendants mischaracterize plaintiff’s testimony as being related to the Horizon Letter, when plaintiff only responded to a general question of whether Physicians get involved in medical recordkeeping, and not with respect to anything contained in the Horizon letter or the fact that it was addressed to a physician.
53. Admitted that Plaintiff sent the referenced email to McDonough and Perez. As to the contents of the email, the document speaks for itself.
54. See response to 53. Plaintiff avers further that this email was prior to McDonough’s request that Plaintiff investigate and prepare the report, rather than putting together a team which

included clinical staff to review and evaluate the clinical portions of the record. (WHH Cert., Ex. N., p. 1; Pl. Tr.114:20-115:1). Plaintiff avers further that this email was also prior to the subsequent meeting on April 20, 2010 at which McDonough insisted that Plaintiff complete and sign the report stating “You do it and sign it because we all do and sign things here. Because if we going to go down, we all are going to go down.” (Pl. Tr. 144:12-15).

55. Admitted that the referenced email was sent by Perez and as to its contents, the document speaks for itself. Plaintiff avers further that Yoly and Maria were clinical staff. (Pl. Tr. 113:13-114:1).

56. As to the first sentence, admitted that Plaintiff sent the referenced email, and as to its contents the document speaks for itself. As to the second sentence, admitted.

57. See response to 56. Plaintiff avers further that her April 19, 2010 email, like her April 16, 2010 email, was prior to McDonough’s request that Plaintiff investigate and prepare the full report, rather than putting together a team which included clinical staff to review and evaluate the clinical portions of the record. (WHH Cert., Ex. N., p. 1; Pl. Tr.114:20-115:1). Plaintiff avers further that this email was also prior to the subsequent meeting on April 20, 2010 at which McDonough insisted that Plaintiff complete and sign the report stating “You do it and sign it because we all do and sign things here. Because if we going to go down, we all are going to go down.” (Pl. Tr. 44:12-15).

58. Admitted that McDonough sent the referenced email and as to its contents, the document speaks for itself. Plaintiff avers further that despite McDonough’s statement that she would provide Plaintiff with resources, when Plaintiff requested assistance in her reply email, and asked if someone could work with her because she did not know how do what was being requested, McDonough did not assign any clinical staff to work with her. (Pl. Tr., 150:16-

21). Plaintiff avers further that when she spoke with Shababb about her concerns, he said that McDonough should have assigned clinical staff to work with her and should do so in the future. (Pl. Tr. 150:23-151:23).

59. The first sentence of this paragraph refers to a document that speaks for itself. The second sentence is admitted. See also response to 58. Plaintiff avers further that at a subsequent meeting on April 20, 2010, McDonough insisted that Plaintiff complete and sign the report stating "You do it and sign it because we all do and sign things here. Because if we going to go down, we all are going to go down." (Pl. Tr. 144:12-15).

60. This paragraph refers to a document that speaks for itself. See also response to 59.

61. Admitted but Plaintiff avers that McDonough knew that Plaintiff did not have a clinical background, testified that preparation of a response to the Horizon report required an evaluation of clinical information to determine the quality of care issue of whether the delay in availability of the patient's lab results caused any risk to the patient's health, that Plaintiff was not qualified to make that determination because she did not have a clinical background, and that to do so would violate quality of care standards and Joint Commission Regulations.

As McDonough testified:

Q. Would you agree that in order to properly respond to the Horizon complaint, North Hudson would need to investigate or evaluate the clinical issue of whether the delay in not having the patient's test results in a timely fashion posed any risk to the patient's health?

A. Yes.

(MM Tr. 51:14-20)

Q. And you evaluated the lab results to determine whether or not the delay caused any potential risk of harm to the patient; correct?

A. Correct.

Q. And that was the evaluation that required clinical background?

A. Yes.

(MM Tr., 50:20- 51:1)

* * *

Q. So you reviewed the record in order to respond to the Horizon complaint?

A. I reviewed the record to ensure that everything was in order in terms of the quality of the record. At the time that's what I did.

Q. You determined that the delay caused no harm to the patient's health?

A. I did.

Q. And you did that based upon your clinical experience?

A. Yes.

Q. Oristela does not have clinical experience?

* * *

A. She does not.

(MM Tr., 49:1-15)

* * *

Q. So Oristela would not then be able to determine whether or not the delay in the patient's lab results being available caused any potential patient health risk?

A. No, she would not.

Q. And would you agree it would be unethical to prepare a report requiring such an evaluation of clinical information if one does not have a clinical background?

* * *

Q. Do you agree it would be unethical to sign off on a report requiring evaluation of clinical information if one had no clinical background?

* * *

A. Yes.

(MM Tr., 49:17-50:19)

Q. Would you agree it would violate quality of care standards if a person without clinical qualifications completed a report requiring evaluation of clinical information?

A. Evaluation of clinical information, yes.

(MM Tr., 51:9-13)

Plaintiff avers further that Shababb also testified that he agreed that Plaintiff was not qualified to sign off on the Horizon Report that involved clinical issues, since she was not clinically qualified, and that to do so would violate quality of care standards. Shababb testified:

Q. Were you aware that Oristela did not have a clinical background?

A. Yes.

(MS Tr. 17:13-15)

Q. Did you discuss with Oristela, and you may have, what you just testified to, but just to be clear, she did not have a clinical background and therefore did not feel qualified to complete a report in response to the Horizon complaint?

* * *

A. Basically, yes. I will repeat what I think I said, which was that if it was a medical issue and she is not a medical person, that she should not respond.

(MS Tr. 42:22-43:6)

Q. If she were asked to evaluate something requiring an evaluation of clinical information and to sign off on that, would you agree that would be unethical?

* * *

A. If she was asked to evaluate and sign off on it, yes, that's not her background. Yes.

Q. And it would violate hospital quality of care standards if a person without clinical qualifications completes a report requiring evaluation of clinical information?

A. If she was asked to evaluate, yes.

(MS Tr. 31:1-20)

Plaintiff avers further that Irizarry also testified that a patient's not receiving lab results in a timely manner creates a potential risk to the patient's health that requires investigation by a clinical person.

Q. And when you say "results", such as blood test results?

A. Correct.

Q. Or any other results, any other examinations the patient may have gone under?

A. Correct.

Q. Because of course, you would appreciate if a patient doesn't receive their test results in a timely manner, this could cause some health issues, health concerns to that patient?

A. Correct.

Q. And those health issues, health concerns are clinical issues; is that correct?

* * *

A. Yes.

(CI Tr., 57:4-18).

Q. Now, if there was an investigation that was done to determine if the delay in doing the patient's test results resulted in a health risk to the patient, that

would be an investigation that was done with someone who had a clinical background, a medical background; is that correct? I believe you said that earlier.

A. Yes.

Q. And so the individual who would sign off on that report would be someone who has a medical background or clinical background; correct?

A. For a clinical issue, yes.

Q. You wouldn't want a person to sign off on such an investigation if they didn't have a clinical background?

A. If it was a report about a clinical delay or a delay that would harm a patient, yes.

Q. "Yes" being you wouldn't want someone to sign off on that report who did not have a clinical background?

A. Right.

(CI Tr., 59:16-60:11)

Plaintiff avers further that Irizarry also testified that North Hudson was governed by Federal and

State regulations to ensure quality of care standards:

Q. Now, North Hudson is bound by Federal and State regulations to ensure quality of care standards; is that correct?

A. Correct.

Q. And you as the CEO would take seriously North Hudson's duty to ensure quality of care; 20 correct?

A. Yes.

Q. And you're familiar with the regulations pertaining to quality of care; correct?

A. Somewhat.

(CI Tr. 44:14-24).

62. Denied to the extent that Defendants contend that the reference to “response” to “investigating the lost record” refers to anything beyond the initial investigation report (WHH Cert., Ex. O) that Plaintiff prepared in fulfillment of her nonclinical job functions to determine that the medical record had not been lost.
63. Denied in so far as Defendants contend that the absence of such words means that there was no patient care issue that required investigation to complete a report in response to the Horizon Complaint. Admitted that Plaintiff as Director of Health Information Management completed her proper role in the investigation according to her job functions and qualifications by (1) making key personnel aware of Horizon’s request;(2) initiating the investigation by preparing the preliminary nonclinical portion of the report (WHH Cert., Ex. O); (3) providing a copy of the medical record; and (4) proactively following up to ensure a timely response was provided. (WHH Cert., Ex. R). Thus, Plaintiff had no need to use the words “patient care,” in her preliminary report.
64. Denied as the paragraph is framed in an intentionally misleading and unclear manner. Plaintiff prepared her preliminary report (WHH Cert., Ex. O) (referred to as “Plaintiff’s Report” by Defendants in this paragraph) *prior* to McDonough’s verbal demand that Plaintiff prepare and sign off on a final letter response to Horizon. Plaintiff’s preliminary report was provided as her “contribution” to the final Horizon report, (Pl. Tr. 130:25-131:3) which she expected would have then been completed by the clinical staff, as it had been in the past. (Pl. Tr. 114:17-115:17). Plaintiff avers further that when she spoke with Shababb about her concerns, he said that McDonough should have assigned clinical staff to work with her and should do so in the future. (Pl. Tr. 150:23-151:23).

65. Admitted as to the first three sentences. Denied as to the fourth sentence, as Plaintiff previously informed McDonough by an email on April 20, 2010 that she did not know how to do the report, and asked if someone (*i.e.*, a clinical person) could work with her (WHH Cert., Ex. N), and in so far as it implies that McDonough was not aware that Plaintiff did not know how to and was not qualified to complete and sign off on the Horizon report because she lacked a clinical background. Plaintiff avers further that McDonough testified, that completion of the Horizon report required a clinical evaluation that only a clinical staff member could perform and that she was aware that Plaintiff did not have a clinical background and was therefore not qualified to complete the report. (MM Tr. 49:1-15; 49:17-50:19; 50:20-51:1; 51:9-13; 51:14-20).

66. Plaintiff cannot admit or deny the first sentence, as the same states that “Despite never having expressed it” and it is unclear what “it” refers to. The remainder of the paragraph is admitted. Plaintiff avers further that McDonough insisted after Plaintiff told her that she could not do the remainder of the report because she did not have the clinical knowledge to do it that “You do it and sign it because we all do and sign things here.” (Pl. Tr. 145:22-146:3).

67. Admitted and avers that McDonough prepared the report with Nishie Perez (“Perez”), Director of Quality Assurance, while reviewing the patient’s medical record. (Pl. Tr. 146:4-15). Plaintiff further avers that McDonough testified that in order for McDonough to complete the Horizon report, she:

...reviewed the record to ensure that everything was in order in terms of the quality of the record. At the time that's what I did.

Q. You determined that the delay caused no harm to the patient's health?

A. I did.

Q. And you did that based upon your clinical experience?

A. Yes.

(MM Tr. 49:1-11)

68. Admitted and Plaintiff avers that the same is consistent with plaintiff completing her proper role in the investigation. Also, see response to 63.

69. Admitted and avers that Plaintiff further testified the patient's medical history, diagnosis, and issues were reviewed in order to prepare the report. (Pl. Tr. 140:4-10). See also response to no. 67.

70. Admitted that Plaintiff testified that reviewing laboratory results with the patient is a clinical function and that statement refers to that that clinical process. (Pl. Tr. 135:20-24; 137:13-138:4).

71. See response to No. 70

72. Admitted and avers that on April 21, 2010 Shababb's assistant called Plaintiff in her office and informed her that Shababb wished to speak with her, and that she should come up to the second floor of West New York administrative offices to meet with him. (Pl. Tr. 149:18-150:2). Plaintiff avers further that what was discussed and reviewed at Plaintiff's April 21, 2010 meeting with Shababb is stated below in Plaintiff's Supplemental Statement of Undisputed Material Facts ("Plaintiff's Supplemental Statement of Facts").

73. Admitted and Plaintiff avers that the additional communications and interactions that occurred at the April 23, 2010 meeting are stated below in Plaintiff's Supplemental Statement of Facts.

74. Admitted and Plaintiff avers that the quoted language reflects only fragments taken out of context of the whole of what Plaintiff wrote in her denial of the allegations contained in the disciplinary warning, and is therefore misleading. Plaintiff avers further that the document speaks for itself.
75. Denied as the paragraph as written is misleading. Right after Plaintiff left McDonough's office after McDonough gave her the warning on April 23, 2010, Plaintiff reached out to Irizarry to complain about the retaliation for her refusal to complete the clinical portion of, and sign off on the Horizon Report. Irizarry asked Plaintiff to send him her complaints in writing and told her that he would address the issues on the following Monday, April 26, 2010. (Pl. Tr. 166:17-167:17).
76. Admitted and Plaintiff avers that the excerpted language from the document is taken out of context of the whole of what Plaintiff wrote in her April 26, 2010 complaint to Irizarry and is therefore misleading. Plaintiff avers further that the document speaks for itself and a fuller explanation of what is stated in Plaintiff's letter to Irizarry of April 26, 2010 is stated below in Plaintiff's Supplemental Statement of Facts.
77. Admitted. Plaintiff avers that she subsequently reiterated her earlier April 26, 2010 complaint of retaliation when she made a complaint of retaliation to Human Resources Director Barbara Blake Kimble on November 2, 2010 (WHH Cert., Ex. W), as more fully set forth below in Plaintiff's Supplemental Statement of Facts.
78. Admitted.
79. Admitted that Irizarry so testified and Plaintiff avers that Irizarry never responded to Plaintiff's request (Pl. Tr. 176:20-177:9) and thus she has no firsthand knowledge of these statements.

80. Admitted. Plaintiff avers further that Plaintiff's November 2, 2010 complaint further details the retaliation to which she was subject subsequent to her April 2010 whistleblowing activity (WHH Cert., Ex. W) which is more fully stated below in Plaintiff's Supplemental Statement of Facts. Plaintiff avers further that her November 2, 2010 complaint speaks for itself.
81. Admitted. Also see response to no. 80.
82. Admitted.
83. Admitted, however, Defendants improperly fail to cite to the record.
84. Admitted that McDonough sent the September 3, 2010 email; as to the contents of the email, the document speaks for itself.
85. Admitted and Plaintiff avers further that from September 9, 2010 until Nelly Gourzis was terminated in November 2010, Plaintiff received no support from McDonough to deal with Nelly Gouzis' performance issues. (Pl. Tr. 197:14-25).
86. Admitted as to the first sentence. As to the second sentence, admitted that McDonough directed Plaintiff to put the performance issues that Nelly Gourzis was having in writing and that Plaintiff did so by way of an email on October 5, 2010. Plaintiff avers further that McDonough failed to provide any response to that email, and thereafter told her to work with HR. (Pl. Tr. 212:15-19; 228:3-16).
87. Admitted and Plaintiff avers further that she had reason to believe that McDonough did not support her in connection with the complaint made against Plaintiff by Nelly Gourzis. (Pl. Tr. 205:21-209:10).
88. Admitted that McDonough so testified but avers that Plaintiff is without firsthand knowledge of the alleged reaction of McDonough, McDonough never discussed the employee

complaints with Plaintiff, and Plaintiff was never made aware of McDonough's feelings about or reactions to the employee complaints against Plaintiff. (Pl. Tr. 203:12-204:1).

89. Denied. On October 18, 2010 Plaintiff sought overtime approval from McDonough due to Nelly Gourzis' failure to perform her job duties resulting in a backup of unfilled reports. McDonough ignored Plaintiff's request compelling Plaintiff to send another request to McDonough On October 21, 2010, in which she copied upper management to make them aware of the problem created by Ms. Gourzis' failure to perform her job functions. (Pl. Tr. 214:23-215:11; 216:4-25). Only after Plaintiff escalated the request by notifying upper management of the issues did McDonough grudgingly approve the request. (Pl. Tr. 217:4-9).
90. Admitted.
91. Denied to the extent the Defendants contend that Plaintiff had authority to override Kimble's suggestions and terminate Gourzis without the approval of McDonough. Plaintiff avers further that the failure to adequately address the issue of the nonperforming employee created a huge problem in the department. (Pl. Tr. 231:17-21).
92. Admitted but denied to the extent Defendants contend that Plaintiff had authority to override Kimble's request without the approval of McDonough.
93. McDonough was aware of the situation through her being copied on the emails and Plaintiff expected that McDonough and Kimble would work together, and McDonough would get back to her as she was her supervisor, to inform her what they were going to do to properly address the issues with Gourzis' nonperformance. (Pl. Tr. 236:7-15).
94. Admitted.
95. Admitted as to sending the complaint letter on November 2, 2010 to Kimble, which document speaks for itself. (WHH Cert., Ex. W). Plaintiff avers further that Plaintiff's

November 2, 2010 complaint further details the retaliation to which she was subject subsequent to her April 2010 whistleblowing activity which is more fully stated below in Plaintiff's Supplemental Statement of Facts. Plaintiff avers further that the document speaks for itself.

96. See response to No. 95. Denied in so far as Defendants contend that Plaintiff's counsel drafted any part of the Complaint letter. As Plaintiff testified, she drafted the entire letter herself, during a conversation with her counsel. Any further questions regarding her consultations with counsel were not responded to based upon attorney-client privilege. (Pl. Tr. 245:20-246:10).
97. Denied in so far as Defendants fail to cite to the record. Plaintiff avers further that she is without firsthand knowledge of the alleged reaction or feelings of McDonough, McDonough never discussed the employee complaints with Plaintiff, and Plaintiff was never made aware of McDonough's feelings about or reactions to the employee complaints against Plaintiff. (Pl. Tr. 203:12-204:1).
98. Admitted that McDonough so stated and Plaintiff avers further that she is without firsthand knowledge of the alleged reaction or feelings of McDonough, McDonough never discussed the employee complaints with Plaintiff, and Plaintiff was never made aware of McDonough's feelings about or reactions to the employee complaints against Plaintiff. (Pl. Tr. 203:12-204:1).
99. As to the first sentence, admitted that a meeting occurred on November 5, 2010 with Irizarry, Shababb and McDonough the purpose of which Plaintiff believed was to discuss her November 2, 1010 complaint letter (Pl. Tr. 270:18-24). As to the second sentence, admitted that Irizarry so testified, but Plaintiff avers that at the meeting, rather than address her

complaint of retaliation, Irizarry, Shababb and McDonough insisted that Love's complaints were without merit, that she should not have used the word "retaliation" and pressured her to retract them. (MS Tr. 101:7-13; 101:18-25; 106:23-107:6; Pl. Tr. 274: 17-24; 374:21-375:9).

Plaintiff avers further that McDonough testified that she told Plaintiff at the November 5, 2010 meeting that there was no merit to her complaints of retaliation and "that is an inappropriate thing to accuse a member of Senior Management of retaliating against you and putting such a thing in writing." (MM Tr. 150:14-18)

Despite the extreme pressure and fear of retaliation, Plaintiff always maintained that she was retaliated against and refused to retract her complaint. (Pl. Tr. 274:6-16; 374:21-375:11).

100. Admitted.

101. Denied. (Pl. Tr. 274:6-16).

102. Admitted that Irizarry stated the same to Plaintiff after the meeting and after Shababb and McDonough had left, and avers that he also stated to Plaintiff that he "knew what she was going through". (Pl. Tr. 274:13-276:5).

103. Admitted that Irizarry sent an email on November 10, 2012 which falsely stated that Plaintiff had stated at the November 5, 2010 meeting that she did not feel retaliated against. Plaintiff avers that by way of her letter of November 12, 2010 she confirmed her dismay at such attempts to mischaracterize what occurred at the meeting and further pressure her to retract her complaint of retaliation. (WHH Cert., Ex. Y).

104. Admitted that Plaintiff prepared and sent the letter of November 12, 2010, and denied that she testified that she did so with the assistance of her attorney, rather, Plaintiff testified that "someone" reviewed the letter that she had prepared. (Pl. Tr. 259:5-19).

105. Admitted that Irizarry sent the referenced letter of November 15, 2010 to Plaintiff in response to her November 12, 2010 Memorandum. As to the contents of Plaintiff's November 15, 2010 letter, the document speaks for itself. Also, see Plaintiff's Statement of Facts.

106. Admitted that Plaintiff sent the November 18, 2010 email in response to Irizarry's November 15, 2012 Memorandum. As to its contents, the document speaks for itself.

107. Admitted that Irizarry terminated plaintiff because she maintained and refused to retract her complaint of retaliation and fraud. (CI Tr. 167:23-168:3). As Ms. McDonough testified with regard to the reason for Plaintiff's termination:

I believe I already knew what the reasons were. And that was that she refused to be a team player and come along and understand. That there wasn't any retaliation going on. So I always believed that that was it. That, you know, she had made an accusation against myself and she was not going to understand that it didn't happen. And I thought that that's what it was.

(MM Tr. 166:5-13).

Denied as to the remainder, as Plaintiff never stated that she was not retaliated against and Irizarry also acknowledged what Plaintiff "was going through". (Pl. Tr. 274:6-276:5).

108. -109 Plaintiff has not firsthand knowledge of these facts but admitted that Irizarry so testified to the same.

110. Admitted and avers that Shababb gave no further clarification of what he meant by "recent incidences."

111. Admitted.

PLAINTIFF'S RESPONDING STATEMENT OF DISPUTED MATERIAL FACTS

1. In order to investigate and respond to the Horizon Complaint, a clinical evaluation of the patient's medical record was required.
2. Plaintiff, as Director of Health Information Management, completed her proper role in the investigation of the Horizon Complaint according to her job functions and qualifications by (1) making key personnel aware of Horizon's request; (2) initiating the investigation by preparing the preliminary nonclinical portion of the report (WHH Cert., Ex. O); (3) providing a copy of the medical record; and (4) proactively following up to ensure a timely response was provided. (WHH Cert., Ex. R).
3. Love was not qualified to and sign off on the Horizon Report that involved clinical issues, since she was not clinically qualified. (MS Tr. 17:13-15; 42:22-43:6).
4. Whether the delay in treatment due to the lab results being unavailable to the HMO member posed any health risk to the patient was a clinical determination which should be made by a member of the clinical staff. (MS Tr. 37:25-38:12; 28:6-9 and 29:14-17).
5. It would be unethical and violate quality of care standards for Love to sign off on a report requiring evaluation of clinical information, since she did not have a clinical background. (MS Tr. 31:1-20).
6. Irizarry also agreed that the Horizon complaint raised clinical issues requiring investigation by medical staff. (CI Tr. 59:16-60:11).
7. McDonough also admitted that completion of the Horizon report required evaluation of clinical information by clinical staff. (MM Tr. 49:1-15).

8. McDonough also agreed that it would be unethical and violate quality of care standards for Love to sign off on a report requiring evaluation of clinical information, since she had no clinical background. (MM Tr. 49:17-25; 51:9-13).
9. On April 19, 2010, Love completed her initial investigation in accordance with her role as Director of HIM by finding that the record had not been lost, but that the labs had not been available, and informing of when the patient was next seen, she informed Perez, Dr. Vereza, Chief Medical Officer, and McDonough that she had the patient's record on her desk and was waiting for a decision, by which she was referring to which clinical staff would be assigned to perform the clinical review of the record to complete the Horizon report. (WHH Cert., Exs. N, O).
10. Perez responded that she thought Yoly or Maria, clinical staff, would be looking into the clinical issues, since the patient was from their department. (WHH Cert., Ex. N; Pl. Tr. 113:13-114:1).
11. However, Rather than assign clinical staff to work on the clinical issues in accordance with protocol, McDonough asked Plaintiff to complete the investigation, despite that, that completion of the investigation and preparing the final report required a clinical evaluation for which McDonough knew Plaintiff was not qualified to perform, and that for Plaintiff to do so would violate quality of care standards. (MM Tr. 49:1-15; 49:17-50:19; 50:20- 51:1; 51:9-20).
12. On April 20, 2010, McDonough insisted that Love complete and sign a response to the Horizon complaint, stating "You do it and sign it because we all do and sign things here. Because if we going to go down, we all are going to go down." (Pl. Tr. 144:12-15).

13. Because she lacked clinical qualifications, Love reasonably believed that signing the report would be fraudulent, immoral and unethical, as well as violate regulations governing and important public policies underlying patient quality and standards of care. (WHH Cert., Exs. R and W; Pl. Tr. 143:14-17).
14. McDonough, a nurse practitioner qualified to evaluate clinical information, was outraged at Love's refusal to complete and sign the report grabbed the medical record Love had provided, and stormed off to her office to complete and sign off on the report. (Pl. Tr. 146:8-10).
15. On April 21, 2010 Shababb's assistant called Plaintiff in her office and informed her that Shababb wished to speak with her, and that she should come up to the second floor of West New York administrative offices to meet with him. (Pl. Tr. 149:18-150:2).
16. At their meeting on April 21, 2010, Shababb reviewed the emails relevant emails exchanges on a computer that was in the office where they were meeting.
17. Shababb agreed at the April 21, 2010 meeting with Love that Love had done her part in completing the initial nonclinical part of the investigation and stated to Love "I can see that you did not back down." (Pl. Tr. 150:5-21).
18. Shababb also told Love at their April 21, 2010 meeting that he told McDonough that she should have appointed a clinical team to complete the Horizon Report and directed her to do so in the future. (Pl. Tr. 150:19-151:7).
19. On April 23, 2010 Love was called to a meeting with Shababb, McDonough and Perez. (Pl. Tr. 156:5-157:6).
20. McDonough immediately launched into a hostile verbal tirade against Love for her refusal to complete the report. (Pl. Tr. 157:7-157:22; 159:3-9; 159:22-24).

21. McDonough violently shook her finger at Love while accusing her of refusing to follow her orders and threatened Love that her position would be eliminated. (Id.; Pl. Tr. 160:3-12).
22. Love attempted to once again defend her actions which were necessitated by her lack of clinical qualifications, explaining to Shababb that “she did everything that she was supposed to do.” (Pl. Tr. 158:7-15).
23. Shababb did not disagree with Plaintiff’s explanation. (Pl. Tr. 158:16-17).
24. Immediately following the meeting, McDonough again furiously accused Love of refusing to follow her directions and handed Love a written warning –*the first and only discipline of any kind that Love had received in her 16 years at NHCAC*. (Pl. Tr. 161:17-162:15; MS Tr. 127:22-128:7; MM Tr. 172:9-14).
25. Prior to the April 23, 2010 warning, Love received no prior counseling or verbal warning.
26. Subsequent to the April 23, 2010 warning, Love received no counseling, warnings or other discipline. (MS Tr. 127:15-21; MM Tr. 172:2-7).
27. Love wrote her reasons on the warning for refusing to participate in what she reasonably believed was fraudulent and unlawful conduct, including that she did not say “no” but rather that she felt uncomfortable with writing a report concerning a breakdown in clinical processes because she was not a clinical and therefore asked for help. (WHH Cert., Ex. Q).
28. On April 26, 2010, Love complained to Irizarry about the her supervisor’s fraudulent and illegal conduct in requiring Plaintiff to prepare and sign a report that required clinical evaluation that she was not qualified to make. (WHH Cert., Ex. R).

29. Love requested that the retaliatory warning her supervisor issued to her for such refusal be retracted. (WHH Cert., Ex. R).

30. Love also asked that her reporting structure be changed, as working under McDonough was having a negative impact upon her professionally, personally, mentally and physically. (WHH Cert., Ex. R).

31. Defendants failed to investigate or take any remedial measures in response to Love's complaint. As Irizarry testified:

Q. Okay. Now, Ms. Love had sent you a letter, complaint letter, on April 26, 2010. That was regarding the -- what she considered to be retaliatory warning on April 23rd, 2010. Do you recall that?

A. I do.

Q. Okay. So had you looked into her complaints back in April 2010?

A. I had.

Q. Okay. Why didn't you respond to her April 26, 2010 complaint letter when she sent it to you?

A. I don't recall.

(CI Tr. 191:7-19)

Q. Now, when you received P-15, Ms. Love's letter, did you conduct any investigation into the contents of P-15?

A. No.

(CI Tr. 178:21-24).

32. After the retaliatory warning in April 2010, McDonough then further retaliated by refusing to send Plaintiff to Electronic Records training as reflected by the August 2010 email exchanges with Mr. Irizarry after Plaintiff spoke with him in July 2010., (Pl. Tr. 42:11-43:8; 179:15-183:10, WHH Cert., Ex. L) .

33. Plaintiff did not speak with Irizarry about the issue of being sent to EMR training in 2009, but as Defendants state in paragraph 40 of their Statement of Facts, the only time that Plaintiff spoke to Irizarry about this issue was in July 2010.
34. Irizarry was involved in the decision to deny Plaintiff EMR training. As Ms. McDonough testified:
- Q. What about Mr. Irizarry? Did he have an involvement in denying Oristela's request to attend the training?
- A. Of course.
- (MM Tr. 110; 15-18).
35. Shababb testified that Plaintiff "in her position, with her responsibility, should have been sent to the training." (MS Tr. 94:23-95:1).
36. Irizarry testified that it was "appropriate for Ms. Love to ask to be sent for certification training" and "I do believe that at some point she should have been attending these trainings." (CI Tr. 120:18-19 and 121:6-8).
37. Plaintiff never received the EMR training session in house. (Pl. Tr. 183:5-10).
38. The individuals who attended the training were not as qualified to instruct employees in-house as the trainers at the outside training seminar and NHCAC would not be able to provide Plaintiff with any certification as she would have received had she attended the outside training. (MS Tr. 94:4-10).
39. From September 9, 2010 until Nelly Gourzis was terminated in November 2010, Plaintiff received no support from McDonough to deal with Nelly Gouzis' performance issues. (Pl. Tr. 197:14-25).

40. On October 5, 2010, Plaintiff sent an email to McDonough regarding Nelly Gourzis' performance issues. (Foner Cert., Ex. G).
41. McDonough failed to provide any response to Plaintiff's October 5, 2010 email regarding Nelly Gourzis and thereafter directed Plaintiff to work with HR. (Pl. Tr. 212:15-19; 228:3-16).
42. Plaintiff had reason to believe that McDonough did not support her in connection with the complaint made against Plaintiff by Nelly Gourzis. (Pl. Tr. 205:21-209:10).
43. McDonough never discussed the employee complaints by Nelly Gourzis and Maribel Rodriguez with Plaintiff, and Plaintiff was never made aware of McDonough's feelings about or reactions to the employee complaints against Plaintiff. (Pl. Tr. 203:12-204:1).
44. On October 18, 2010 Plaintiff sought overtime approval from McDonough due to Nelly Gourzis' failure to perform her job duties resulting in a backup of unfiled reports. McDonough ignored Plaintiff's request compelling Plaintiff to send another request to McDonough On October 21, 2010, in which she copied upper management to make them aware of the problem created by Ms. Gourzis' failure to perform her job functions. (Pl. Tr. 214:23-215:11; 216:4-25). Only after Plaintiff escalated the request by notifying upper management of the issues did McDonough grudgingly approve the request. (Pl. Tr. 217:4-9).
45. The failure to adequately address the issue of the nonperforming employee created a huge problem in the department. (Pl. Tr. 231:17-21).
46. McDonough was aware of the situation with Nelly Gourzis' performance through her being copied on emails and Plaintiff expected that McDonough and Kimble would work together, and McDonough would get back to her as she was her supervisor, to inform her

what they were going to do to properly address the issues with Gourzis' nonperformance.
(Pl. Tr. 236:7-15).

47. November 2, 2010, plaintiff sent a complaint to HR Director Kimble, in which Plaintiff again complained about her supervisor's illegal and fraudulent conduct in requiring Plaintiff to prepare and sign a report that required a clinical evaluation that she was not qualified to make (WHH., Ex. W).

48. Plaintiff also detailed the additional retaliatory behavior that she had been experiencing since the warning as a consequence of her refusal to engage in what she reasonably believed to be unlawful and fraudulent conduct, as an effort to set her up for termination. Plaintiff's fear that she was being set up for termination were confirmed by her conversation with Kimble and memorialized in her November 2, 2010 complaint. (WHH., Ex. W; Pl. Tr. 237:25-239:19).

49. For fear that she was being set up for termination, Plaintiff cancelled her vacation plans. (Pl. Tr. 239:21-25).

50. A meeting occurred on November 5, 2010 with Irizarry, Shababb and McDonough the purpose of which Plaintiff believed was to discuss her November 2, 2010 complaint letter (Pl. Tr. 270:18-24).

51. At the meeting, rather than address her complaint of retaliation, Irizarry, Shababb and McDonough insisted that Love's complaints were without merit, that she should not have used the word "retaliation" and pressured her to retract them. (Pl. Tr. 274:17-24; 374:21-375:9; MS Tr. 101:7-13; 101:18-25; 106:23-107:6).

52. Despite the extreme pressure and fear of retaliation, Plaintiff always maintained that she was retaliated against and refused to retract her complaint. (Pl. Tr. 274:6-16; 374:21-375:11).
53. Love never retracted any of her complaints, verbally or otherwise. (Pl. Tr., 274:6-16; WHH Cert., Exs. Y and AA).
54. Plaintiff's written communications to Irizarry also objected to his attempts to put mischaracterize what happened at the November 5, 2010 meeting. (WHH, Ex. Y, AA).
55. Irizarry stated to Plaintiff after the November 5, 2010 meeting that he "knew what she was going through". (Pl. Tr. 274:13-276:5).
56. Irizarry sent an email on November 10, 2012 which falsely stated that Plaintiff had stated at the November 5, 2010 meeting that she did not feel retaliated against. (WHH, Ex. Y, AA).
57. By way of her letter of November 12, 2010, Plaintiff confirmed her dismay at Irizarry's attempts to mischaracterize what occurred at the meeting and further pressure her to retract her complaint of retaliation. (WHH Cert., Ex. Y).
58. As they had failed to do when Plaintiff complained in April 2010, once again, defendants did not investigate Plaintiff's complaint of November 2, 2010. (CI Tr. 153:19-154:1).
59. At the November 5, 2010 meeting, beyond asking Plaintiff if she made a complaint of retaliation and fraud, defendants did not get into any further details of Plaintiff's complaint of November 2, 2010. (CI Tr. 151:13-21).
60. Other than the November 5, 2010 meeting, defendants did not have any other meetings with anyone to discuss Love's complaint of retaliation and fraud. (CI Tr. 151:22-152:1).

61. Irizarry terminated plaintiff because of her complaints of what Plaintiff reasonably believed to be illegal and fraudulent activity by her supervisor, and her refusal to retract them. (CI Tr. 167:23-168:3).
62. North Hudson believed that the complaints made by Employees Nelly Gourzis and Maribel Rodriguez against Plaintiff were without merit.(CI Tr. 210:6-21).
63. Gourzis was not disciplined for making a meritless complaint against her supervisor. (CI Tr. 210:6-21).
64. Gourzis was terminated by North Hudson , but her termination was not based on lack of performance, not having made a meritless complaint against her supervisor. (CI Tr. 201:6-21).
65. Maribel Rodriguez was not terminated or otherwise disciplined for making a meritless complaint against her supervisor. (CI Tr. 201:6-21).

HYDERALLY & ASSOCIATES, P.C.
Attorney for Plaintiff

4/9/13


BY: TY HYDERALLY, ESQ.
For the Firm

Hyderally & Associates, P.C.
33 PLYMOUTH STREET, SUITE 202
MONTCLAIR, NEW JERSEY 07042
TELEPHONE (973) 509-8500
FACSIMILE (973) 509-8501
Attorneys for Plaintiff: Oristela Love

ORISTELA LOVE,

PLAINTIFF,

VS.

**NORTH HUDSON COMMUNITY
ACTION CORPORATION, CHRIS
IRIZARRY, JOHN DOES 1-10, AND XYZ
CORP. 1-10,**

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: L-1852-11

CIVIL ACTION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, I caused an original and one (1) copy of the Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment, Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Responding Statement of Disputed Material Facts Submitted Pursuant to R.4:45-2(b), Certification of Francine Foner, Esq., and this Certificate of Service to be served, via hand delivery, upon:

Clerk of the Superior Court
Hudson County, Superior Court of New Jersey
595 Newark Avenue
Jersey City, New Jersey 07306

The undersigned hereby certifies that on this date, I caused an original and one (1) copy of the Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment, Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Responding Statement of Disputed Material Facts Submitted Pursuant to R.4:45-2(b), Certification of Francine Foner, Esq., and this Certificate of Service to be served, via electronic mail and regular mail, upon:

William H. Healey, Esq.
Phillip Ray, Esq.
Kluger Healey, LLC
23 Vreeland Road, Suite 220
Florham Park, NJ 07932


Madelaine Sandoval

DATED: April 9, 2013

Hyderally & Associates, P.C.
33 PLYMOUTH STREET, SUITE 202
MONTCLAIR, NEW JERSEY 07042
TELEPHONE (973) 509-8500
FACSIMILE (973) 509-8501
Attorneys for Plaintiff: Oristela Love

ORISTELA LOVE,
PLAINTIFF,

VS.

**NORTH HUDSON COMMUNITY
ACTION CORPORATION, CHRIS
IRIZARRY, JOHN DOES 1-10, AND XYZ
CORP. 1-10,**
DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: L-1852-11

CIVIL ACTION

**CERTIFICATION OF
FRANCINE FONER, ESQ.**

I, FRANCINE FONER , do hereby certify as follows:

1. I am an attorney at law of the State of New Jersey, and an associate at the law firm of Hyderally & Associates, P.C., attorneys for plaintiff, Oristela Love, and as such, I am familiar with the facts and documents as contained herein.
2. I submit this certification in opposition to Defendants' Motion for Summary Judgment.
3. Annexed hereto as Exhibit "A" is a copy of a news report from NJ.Com dated March 5, 2013 reporting that Defendant, Christopher Irizarry resigned from his position at NHCAC.
4. Annexed hereto as Exhibit "B" is a true copy of Plaintiff's resume that was marked at her deposition on October 22, 2010 as Exhibit D-1.

5. Annexed hereto as Exhibit "C" is a true copy of an email from Plaintiff to Maureen McDonough dated October 5, 2010, marked at Plaintiff's deposition as Exhibit D-16.
6. Attached hereto as Exhibit "D" is a true copy of relevant pages of the transcript from the deposition of Defendant, Chris Irizarry.
7. Attached hereto as Exhibit "E" is a true copy of relevant pages of the transcript from the deposition of Michael Shababb.
8. Attached hereto as Exhibit "F" is a true copy of relevant pages of the transcript from the deposition of Maureen McDonough.
9. Attached hereto as Exhibit "G" is a true copy of relevant pages of the transcript from the deposition of Plaintiff, Oristela Love.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Francine Foner

Dated: April 9, 2013

EXHIBIT “A”

By Agustin C. Torres/The Jersey Journal

on March 05, 2013 at 5:20 PM, updated March 05, 2013 at 7:41 PM

Print

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Email



[View full size](#)At the center of the crowd at one

of many election victory celebrations at Schuetzen Park, North Bergen, Union City Mayor and Sen. Brian Stack, left, hugs fellow city Commissioner Chris Irizarry. Irizarry is leaving Union City for Florida and more oxygen. *Jersey Journal* file photo

Union City Commissioner Chris Irizarry is resigning his elected post at tonight's Board of Commissioner's meeting because he has an employment opportunity in Florida. He will be replaced by Celin Valdivia, say North Hudson sources. Celin is a transportation director with the Board of Education.

Reports of Irizarry resigning his commission seat have been circulating for about a week. It was the talk in the back rooms at the Board of Freeholders meeting last week and seen as a weakening of the Union City power structure. Irizarry has been a commissioner since 2002.

Of bigger interest to the Political Insider is just who will replace him at as chairman of the North Hudson Community Action Corporation, where he earned about \$163,000 running the large federally funded nonprofit social and health services agency. Irizarry handed in his resignation last night and it will take effect on Friday. There may be some pension credits, perhaps an annuity, as well.

Irizarry, a strong political ally of Union City Mayor and 33rd District Sen. Brian Stack, took over North Hudson CAC a year after the 2005 death of Michael Leggiro at age 57. Technically, the agency's chief financial officer, Michael Shababb has already become the acting director until someone is selected to replace Irizarry. Shababb took over as acting head after Leggiro's death.

Although there is a strict process to be followed and the federal government has veto power, Union City officials believe the chairmanship has historically been handed to one of their own residents. Irizarry happened to have all of the required certificates and education for the post.

It would not surprise me if -- as happens in these days of North Hudson political strife -- that there may be an effort to break "tradition." There may be some trial balloons of possible replacements, more than likely suggested from North Bergen.

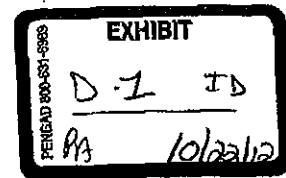
While it sounds great that Irizarry has another job opportunity, the sense here is that the commissioner was fleeing Union City. Stack can be a very demanding captain of the Union City ship and not everyone can keep up with his sometimes mad 24/7 pace. Irizarry found it difficult to juggle politics, a family and the nonprofit agency while maintaining sanity. The "employment opportunity" is more like a life raft, say several county wags.

People forget that Irizarry was part of a group that was planning a palace coup at the start of Stack's tenure as mayor. Unfortunately, Stack accidentally walked in on the "secret" meeting. Heads rolled but Irizarry remained.

No doubt handpicked by Stack, Valdivia is the nephew of Julia Valdivia, who was known in the 1960s and 1970s as "La Alcadesa" of the city under the administration of the late mayor and sen. William V. Musto. She was head of Hispanic Affairs until the Musto administration splintered and Robert Menendez and Bruce Walter, future mayors, took over in 1986.

EXHIBIT “B”

Oristela Love
608 11th Street Apt. #2
Union City, N.J. 07087
Tel. (201) ~~864-0647~~ 868-5386



Professional Education:

Superior expert BA equivalent in Health Statistics and medical records, University of Antioquia, Medellin, Republic of Colombia, 1977.

Short courses under the auspices of The Panamerican Health Organization/ World Health Organization:

- Administration applied to hospitals, Santo Domingo, Dominican Republic, 1986.
- Methodology of investigation in Health Sciences, Santo Domingo, Dominican Republic, 1985.
- Diseases International classification (9th review), Caracas, Venezuela, 1982.

Participation In Seminars About:

- Health information Statistics Systems, Santo Domingo, Dominican Republic, 1985.
- Vital Statistics, Santo Domingo Dom. Rep., 1983.
- National Systems of information Statistics for the programing and Administration of Health programs, Santo Domingo, Dom. Rep., 1982.
- Elaboration Rules of Organization Medical Records Services for Hospitals, Santo Domingo, Dominican Republic, 1979.

WORK EXPERIENCE:

- 10/88 - 7/91 Investigator and records Manager Reconstruction Engineering Associates, San Francisco, CA.
- 6/88 - 9/88 Director National Medical Records Ministry of Public Health and Social Assistance, Santo Domingo, Dominican Republic.
- 2/84 - 9/88 Consultant Director Medical Records, Medical Center of the University Central East, Santo Domingo, Dominican Republic.

- 6/86 - 7/88 Consultant Contractual Medical Records, Panamerican Health Organization, Santo Domingo, Dominican Republic.
- 4/77 - 3/87 Director Biostatistics Regional, Central Region of Health Ministry, Santo Domingo, Dom. Rep.

Duties for Positions Above Included:

Take care of medical information about aspects relative to accident investigation and Company records.

Planning, Coordination, Implementation, Evaluation and Control of Medical Record systems and Biostatistics.

Developed and prepared reports on Medical records and Biostatistics problems with recommended Solutions.

Coordination of activities for Medical Records International Consultants.

Academic Experience:

Professor of Medical Records, Biostatistics and Morality Codification of:

-University CETEC, July 1979 - Dec. 1982.

-University Eugenio Maria de Hostos
April 1984 - June 1986.

-University Catolica Madre y Maestra, Santo Domingo, Dom. Rep. Nov. 1983 - Dec. 1983.

Coordinator and Professor of Medical Records and Biostatistics, sponsored by the Panamerican Health Organization and Ministry of Public Health, Santo Domingo, Dominican Republic Feb. 1986 - April 1986.

Articles Published

Manuals of Organization, Rules and Procedures for Medical Records Services for Hospitals, Department of Public Health, Dominican Republic, April 1986.

Skills

Typing, 45 wpm

First choice, Computer Program.

Foreign Languages

Spanish.

Personal

Birthday, August 9.

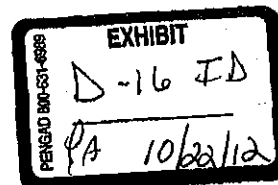
References

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Dominican Republic.
Tel: (809) 682-6337

EXHIBIT “C”



Oristela Love

From: Oristela Love
Sent: Tuesday, October 05, 2010 2:13 PM
To: Maureen McDonough; Barbara Blake Kimble
Cc: Oristela Love
Subject: Emailing: Nelly Gouzis
Attachments: Nelly Gouzis.docx

The message is ready to be sent with the following file or link attachments:

Nelly Gouzis

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

October 5, 2010

Maureen, as per our telephone conversation this morning, I am requesting the termination of employment of Nelly Gouzis WNY/HIM clerk due to poor performance based on the following:

- Verbal warning given on 4/13/10 due to poor work performance. 524 loose reports to file; 190 records to review; 11 visit notes to process. Over time paid to Maritza Trevejo, Carmen Ruiz and Yelmy Rodriguez to do all her work. Mrs. Gouzis Improved during the months of May, June and July. She was up to date with her work.
- Disciplinary actions of 2 days suspension without pay on 9/9/10 again, due to poor work performance. 387 loose reports to file, 267 records to review, 59 new records to process, 36 visit notes to process. Over time paid to Carmen Ruiz to file all loose reports. Some loose reports were Pull and Pull E's. In addition, Cristina Rodriguez and Evelyn Escalona reviewed and filed the 267 records. Nancy Alfonso processed the 59 new records and Claudia Figueroa processed the 36 visit notes.

On 9/9/10, Mrs. Gourzis was placed on a 4 weeks performance review. The results are as follows:

- Performance review conducted on 9/17/10. Results: 48 loose reports to file; 46 new records to process; 7 visit notes to process; 9 records received from Allstate to process; 149 records to review.
- Performance review conducted on 9/24/10. Results: 172 loose reports to file; 70 new records to process; 31 visit notes to process; 150 records to review.
- Performance review conducted on 10/1/10. Results: 337 loose reports to file; 58 visit notes to process; 63 new records to process; 18 Pull reports. Some reports dated 9/3; 9/15; 9/13. 2 Pull E reports. 1 signed by provider 9/22 the other received in HIM 9/14.

Mrs. Gurzis work performance is impacting on patient quality of care and safety, and also in the financial area of NHCAC. Her poor work performance is also impacting staff morale.

Mrs. Gouzis received one week of training at Hoboken site with Odalis Rosario where she stayed for about a month in training and covering Odalis Vacation.

Please Inform,

Thanks,

Oristela Love, RHIT-HIM Director

EXHIBIT “D”

1 A. Better opportunity.

2 Q. More money than the position you held
3 before?

4 A. That's correct.

5 Q. And I see. So you got your Master's
6 when you were at the County of Hudson then?

7 A. That's correct. Yes.

8 Q. Did the County of Hudson pay for your
9 Master's Degree?

10 A. No.

11 Q. All right. So why did you leave the
12 Union City Board of Education?

13 A. Well, I applied for a position with the
14 North Hudson Community Action Corporation.

15 Q. And what year were you hired for the
16 that position?

17 A. March of 2006.

18 Q. What was the position you were hired
19 into?

20 A. President CEO.

21 Q. How did you find out about the position?

22 A. Well, Mr. Ligero (phonetic) who had been
23 there for several years, was one of my counterparts
24 on the Commission and he passed away.

25 So I knew the position was open. But

1 Maureen was promoted. If she was, I believe that
2 Noralisa Santiago became the Director of Clinical
3 Services at that time. But I don't recall.

4 Q. Now, you have -- strike that.

5 While Ms. Love worked for North Hudson,
6 you had supervisory authority over her; is that
7 correct?

8 A. No. She didn't report directly to me.

9 Q. She reported to someone who reported to
10 you?

11 A. That's correct.

12 Q. So by virtue of you being the CEO, did
13 you have supervisory authority over Oristela Love?

14 A. She wasn't my direct report so I didn't
15 evaluate her or any of that stuff. No.

16 Q. Did you have indirect supervisory
17 authority over her by virtue of your position as CEO
18 and President?

19 MR. KLUGER: Objection to form.

20 A. I'm responsible for my direct reports.
21 The people that directly report to me. That's who my
22 responsibility is to. That's basically it.

23 Q. Did you have the power to discipline
24 Oristela Love as the CEO and President of North
25 Hudson?

1 A. Well, I have the authority over my
2 direct reports. And then, of course, you know, I am
3 the CEO so that I oversee the entire organization.

4 Q. So despite the fact that you may not be
5 the person who's doing the disciplining of people
6 that report to your direct reports, you would have
7 the authority to discipline those people. Is that a
8 fair statement?

9 A. If it rises to -- I guess if it's a
10 situation that rises to that level. But I mean, for
11 the most part, the discipline falls with the person's
12 direct supervisor.

13 Q. And if you disagree with the discipline
14 that a direct supervisor is imposing, do you have the
15 power to override that discipline?

16 A. I usually would defer that to Human
17 Resources and to outside counsel.

18 Q. Have you ever disagreed with a
19 disciplinary decision by one of your direct reports?

20 A. Have I ever disagreed in -- can you
21 repeat the question?

22 Q. Sure.

23 (The reporter reads back the requested
24 portion.)

25 A. No.

1 Q. And for the time period that Oristela
2 Love worked for North Hudson, was her position the
3 HIM position?

4 A. Yes.

5 Q. And for the time period that Oristela
6 Love worked at North Hudson, was her direct
7 supervisor the Director of Clinical Services?

8 A. I believe so, yes.

9 Q. Was there a time where her direct
10 supervisor was the Chief Operating Officer?

11 A. Not to my knowledge, no.

12 Q. Who has the power to hire the Health
13 Information Management Supervisor?

14 A. The Director of Clinical Services.

15 Q. Does she make recommendations and then
16 you make the final decision?

17 A. We're talking at that time. Not talking
18 present?

19 Q. At the time when Ms. Love worked.

20 A. When Ms. Love was there, that would be
21 up to the direct report, which was the Director of
22 Clinical Services.

23 Q. Independent of your decision making?

24 A. Yes. I mean, that I entrust my managers
25 to make those types of decisions, of course.

1 Q. So she had -- so Ms. McDonough then,
2 when she was the Director of Clinical Services, had
3 the authority to hire Ms. Love; is that correct?

4 A. Correct.

5 Q. She had the power to discipline Ms.
6 Love?

7 A. Correct.

8 Q. She had supervisor authority over Ms.
9 Love?

10 A. Yes.

11 Q. Did she have the authority to fire Ms.
12 Love?

13 A. She did.

14 Q. Did you have the authority to fire Ms.
15 Love?

16 A. I have the authority, yes, to terminate
17 anyone in the organization as well. Yes.

18 Q. And do you have a contract with North
19 Hudson?

20 A. I do.

21 Q. What is the term of that contract?

22 A. It's a two-year contract. And subject
23 to termination, you know, it's a two-year contract.
24 And it just, you know, it will renew.

25 Q. Does it renew automatically or is there

1 Hudson in 2006?

2 A. 2006, about 550.

3 Q. Do you know in 2010 how many employees
4 there were?

5 A. Close to 750. In that area. Maybe
6 more.

7 Q. Okay. And what about today?

8 A. Today it's about 740, if I'm not
9 mistaken.

10 Q. Now, was the structure of the HIM
11 Department ever changed when Ms. Love worked in the
12 department?

13 A. I'm not certain.

14 Q. Now, North Hudson is bound by Federal
15 and State regulations to ensure quality of care
16 standards; is that correct?

17 A. Correct.

18 Q. And you as the CEO would take seriously
19 North Hudson's duty to ensure quality of care;
20 correct?

21 A. Yes.

22 Q. And you're familiar with the regulations
23 pertaining to quality of care; correct?

24 A. Somewhat.

25 Q. Did you get any training pertaining to

1 A. That's, I guess that's speculative. We
2 obviously want the patient to receive the results as
3 quickly as possible, of course.

4 Q. And when you say "results", such as
5 blood test results?

6 A. Correct.

7 Q. Or any other results, any other
8 examinations the patient may have gone under?

9 A. Correct.

10 Q. Because of course, you would appreciate
11 if a patient doesn't receive their test results in a
12 timely manner, this could cause some health issues,
13 health concerns to that patient?

14 A. Correct.

15 Q. And those health issues, health concerns
16 are clinical issues; is that correct?

17 MR. KLUGER: Objection to form.

18 A. Yes.

19 Q. Now, determining whether a delay in
20 receiving test results resulted in a health risk to
21 the patient, that's a medical determination; correct?

22 A. Determining -- I'm sorry. Can you
23 repeat the question?

24 (The reporter reads back the requested
25 portion.)

1 A. I don't.

2 Q. And being a nurse practitioner was
3 required for her to be the Director of Clinical
4 Services; is that correct?

5 MR. KLUGER: Objection to form.

6 A. Not necessarily. That, I'm not certain.

7 Q. Okay. Do you know if -- strike that.

8 Do you know what the requirements are
9 for someone to serve as the Director of Clinical
10 Services?

11 A. I don't.

12 Q. Do you believe that it requires someone
13 to have a medical background or clinical background
14 to be Director of Clinical Services?

15 A. Yes.

16 Q. Now, if there was an investigation that
17 was done to determine if the delay in doing the
18 patient's test results resulted in a health risk to
19 the patient, that would be an investigation that was
20 done with someone who had a clinical background, a
21 medical background; is that correct? I believe you
22 said that earlier.

23 A. Yes.

24 Q. And so the individual who would sign off
25 on that report would be someone who has a medical

1 background or clinical background; correct?

2 A. For a clinical issue, yes.

3 Q. You wouldn't want a person to sign off
4 on such an investigation if they didn't have a
5 clinical background?

6 A. If it was a report about a clinical
7 delay or a delay that would harm a patient, yes.

8 Q. "Yes" being you wouldn't want someone to
9 sign off on that report who did not have a clinical
10 background?

11 A. Right.

12 Q. And that statement, that assessment that
13 you just made, that's consistent with your
14 understanding of what is ethically required; is that
15 correct?

16 MR. KLUGER: Objection to form.

17 A. I would assume.

18 Q. To be compliant with the regulations
19 that pertain and control North Hudson; correct?

20 A. I wouldn't -- I couldn't answer that.

21 Q. Okay.

22 A. You need this back?

23 Q. Oh, thank you. Yes. You have before
24 you P-4. And I'm not going to keep repeating it, but
25 for I think most of the exhibits I'm using are

1 Q. Take your time to read. I apologize.

2 A. Thank you. Okay.

3 Q. Okay. Now that you have had a chance to
4 review P-7A, do you recall receiving these e-mails on
5 August 2nd, 2010?

6 A. Yes.

7 Q. Let me start at the bottom of the e-mail
8 trail. There is a reference here by Ms. Love to
9 ECW/PM/EHR Certification Training. See that?

10 A. Yes.

11 Q. What is -- what do those acronyms stand
12 for?

13 A. E Clinical Works Practice Management
14 Electronic Health Record.

15 Q. Was Ms. Love sent to ECW/PM/EHR
16 Certification Training?

17 A. I'm not sure if she ever was.

18 Q. Was it appropriate for Ms. Love to ask
19 to be sent for certification training for those three
20 things?

21 A. Yes.

22 Q. And those three things had to do with
23 her job functions as the Director of HIM; correct?

24 A. Well, at this point again, the
25 electronic medical records had just started. So the

1 focus was, I believe, to send more of the IT people.
2 People that had the information technology
3 background. And I think that that's how this
4 transpired.

5 So again, it was very early in the
6 stages. But to your question, I do believe that at
7 some point she should have been attending these
8 trainings. I'm not sure if this was the appropriate
9 time, but that wasn't my decision to make.

10 Q. When you say "she" of course you're
11 referring to Ms. Love?

12 A. Correct.

13 Q. When you say "these trainings" you're
14 referring to ECW/PM/EHR Certification Training?

15 A. That's correct.

16 Q. Were the -- were all the IT -- strike
17 that.

18 Were all the employees who were in the
19 IT Department sent to the ECW/PM/EHR Certification
20 Training?

21 A. Not all.

22 Q. Do you know who was sent to the
23 training?

24 A. Well, based on this particular e-mail,
25 says Sarah Hacker and Robert, who I'm assuming is

1 A. Maureen was upset that Oristela would
2 write this.

3 Q. "This" referred to numerous times
4 throughout your answer is P-14?

5 A. I'm sorry. P-14 where it states, Ms.
6 Love, you know, was actually referenced to the fact
7 that she felt that the report from April of 2010 that
8 was wrong and fraudulent. And that she grieved to me
9 about retaliatory discipline.

10 Q. I'm sorry. What is it you're saying
11 about that?

12 A. I'm sorry. In the letter it states --
13 in the letter she was upset because of the letter.
14 Because she had been defending Oristela from these
15 two employees that she felt were wrongfully accusing
16 Ms. Love.

17 Q. "She" being Maureen?

18 A. Correct. Maureen was defending Ms. Love
19 through HR because HR had an investigation going on.
20 And that was filed by two employees in the HIM
21 Department against Ms. Love. And Maureen took it
22 upon herself to go to Human Resources and say that
23 those two employees were underperforming and they
24 were just trying to set up Ms. Love.

25 And when she saw that, this letter

1 about the meeting?

2 A. Not that I recall.

3 Q. Did Ms. McDonough put anything in
4 writing about the meeting?

5 A. Not that I recall.

6 Q. Other than your November 10th e-mail
7 P-14A, did you put anything in writing about the
8 meeting?

9 A. Not at this point. Not that I recall.

10 Q. And "not at this point", not as of
11 November 10, 2010?

12 A. Correct.

13 Q. And with regard to referencing or
14 getting into the details of P-14, I believe the way
15 you brought up P-14, Ms. Love's complaint was to say,
16 "Oristela, you made a complaint of retaliation and of
17 fraud"; correct?

18 A. Correct.

19 Q. Beyond that, you didn't get into any of
20 the details of what's in P-14; correct?

21 A. I don't recall.

22 Q. All right. Other than the November 5th,
23 2010 meeting, did you have any other meetings with
24 individuals to discuss Ms. Love's complaint of
25 retaliation or fraud?

1 A. Not that I recall.

2 Q. Did you take any other action pertaining
3 to P-14, Ms. Love's complaint, other than what you
4 have testified to?

5 A. I may have reached out for corporate
6 counsel to look into the claim of fraud early on, but
7 that is all. I vaguely remember that. Because that
8 was obviously something, you know, both things
9 concerned me very much.

10 But the fraudulent -- the part of fraud
11 I'm almost certain one of our attorneys was involved
12 in looking into that to make certain that that was
13 not the case.

14 Q. And I don't want you to necessarily -- I
15 don't want you to tell me what you discussed with
16 counsel, but was that inside counsel or is that
17 outside counsel?

18 A. Inside counsel.

19 Q. And did you --

20 MR. KLUGER: Objection to form. I don't
21 think he knows what you mean by that.

22 Q. Let me ask you then.

23 A. Sure.

24 Q. Was that an attorney who was employed by
25 North Hudson?

1 A. Okay. One of our contracted employees.
2 Not a full-time employee.

3 Q. Okay. Who was the attorney you spoke
4 to? Don't tell me what you spoke. What you said to
5 the attorney. What the attorney said to you.

6 A. I can't recall which one of the two I
7 used. Either Mr. Kluger or I used Mr. Mongelli from
8 Decotis.

9 Q. Did you send a copy of P-14 to your
10 contract lawyer?

11 A. I don't recall.

12 Q. What was it -- and I will show you P-14
13 so you have it in front of you. Tell me, what was it
14 about Ms. Love's allegations of fraud that had you
15 most concerned?

16 A. Says, "I truly felt that I was wrong.
17 It was wrong for me to do it and that it was me being
18 part of fraud".

19 Q. Was there an investigation done
20 pertaining to Ms. Love's complaint that she felt that
21 "It was wrong for me to do it and that it was me
22 being part of a fraud"?

23 A. Can you repeat the question?

24 (The reporter reads back the requested
25 portion.)

1 A. Not that I recall.

2 Q. Did you discuss P-14 with Barbara Blake
3 Kimble?

4 A. I don't recall if I did.

5 Q. Did you discuss P-14 with anyone in the
6 HR Department?

7 A. I don't recall.

8 Q. Did you have any other discussions about
9 P-14 with anyone else other than what you have
10 testified to?

11 A. I don't recall.

12 Q. Now, on November 2nd, 2010, had the
13 thought of terminating Ms. Love come up in your mind
14 yet?

15 A. No.

16 Q. When did you first think about
17 terminating Ms. Love?

18 A. After, I want to say after these
19 allegations were not substantiated. Then I started
20 to realize that these were serious allegations
21 against an employee that was -- that was denied. She
22 basically denied the retaliation. I said, "Were you
23 retaliated against? I need to know". "No".

24 Once that happened, of course it was of
25 concern to me.

1 Okay.

2 On November 10th I sent her an e-mail to
3 receive her retraction letter from her or some type
4 of indication that she was comfortable at this point
5 with the fact that she -- not even comfortable, but
6 the fact that she made these allegations and this
7 needed to be cleared up. This, the situation had to
8 be closed. We needed closure and move on.

9 And at that point then she -- then I
10 received another letter from her stating she
11 doesn't -- that she feels the same way, yet she had
12 denied it.

13 So you still have a question?

14 Q. So continue on then. Was it at that
15 point in time you made the decision to terminate Ms.
16 Love?

17 A. Yes.

18 Q. And so it was for all of the things you
19 testified to just now in your answer, those are the
20 reasons why you made the decision to terminate Ms.
21 Love; correct?

22 A. The -- I hate to say it again because...

23 Q. Well, you don't have to repeat the whole
24 thing again. It's a long answer. But just your
25 answer that you just gave, was that all the reasons

1 why you made the decision to terminate Ms. Love?

2 Just to make sure I'm not missing anything.

3 A. Decision to terminate was based on two
4 allegations that were made, and then she later denied
5 retaliation and fraud against another employee.
6 Period.

7 Q. If Ms. Love had given you the letter you
8 were demanding, the retraction letter, and Ms. Love
9 had not made any complaints about retaliation or
10 fraud, would you have made the decision to terminate
11 her?

12 MR. KLUGER: Objection to form. Can you
13 read that one back?

14 (The reporter reads back the requested
15 portion.)

16 MR. KLUGER: You mean --

17 Q. Going forward.

18 MR. KLUGER: Had never made? That's
19 what I'm trying --

20 Q. Let me restate the question. If Ms.
21 Love had given you the retraction letter that you
22 were seeking in P-14A, and she had further made no
23 further complaints of retaliation or fraud, would you
24 have still made the decision to terminate Ms. Love?

25 A. Okay. The second part of your question,

1 no further, I can't say yes to that. Because if Ms.
2 Love six months from now, and this is hypothetical,
3 but six months from now felt retaliated against and
4 wanted to file a complaint, that's something she has
5 a right to do.

6 And same way if she saw something
7 fraudulent and filed a complaint. So it would never
8 be based on her refraining from ever again filing any
9 type of complaints against fraud or retaliation. So
10 that's that part of the question.

11 The first part was with respect to the
12 letter. I think at this point what I was looking for
13 is an admission that she had falsely accused someone
14 of retaliation and fraud. Yes, I was looking for
15 that from Ms. Love.

16 Q. At what point are you referring to?

17 A. November 10th. So at this point
18 November 10th, according to P-14A, had Ms. Love
19 written a letter and said, you know, whatever she
20 would have said in the letter, but retracted her
21 accusations which she, herself, said were not true,
22 then I don't know that I would have terminated her.

23 Q. Okay. All right. So if she had given
24 you the retraction letter and she hadn't made any
25 further complaints about what she had just retracted,

1 according to your testimony, it's your testimony you
2 don't believe you would have terminated her?

3 A. Correct.

4 Q. Why was there no investigation done into
5 Ms. Love's complaint that she felt that Ms. McDonough
6 treated her in a hostile fashion and spoke to her in
7 an inappropriate way?

8 A. I don't have an answer.

9 Q. Was anyone at North Hudson disciplined
10 for not investigating that issue?

11 A. Not to my knowledge.

12 Q. I hate to keep going back and I'm not
13 going to really, but when you made the decision to
14 terminate Ms. Love, did you discuss your decision
15 with anyone at North Hudson?

16 A. No.

17 Q. Now, I believe earlier in the beginning
18 of the deposition you stated that when you make
19 decisions to terminate employees, you get input from
20 the supervisor; correct?

21 A. That's correct.

22 Q. That's the normal procedure?

23 A. Correct.

24 Q. Did you consider some form of discipline
25 short of termination for Ms. Love?

1 modifications to the memorandum to P-16?

2 A. One or two. Couple.

3 Q. Do you have your initial version of the
4 memorandum of P-16?

5 A. I don't believe so. No.

6 Q. What did you do with the initial version
7 of the memorandum?

8 A. I don't recall.

9 Q. Well, could you search your records at
10 North Hudson and produce to your counsel the initial
11 version or any versions of P-16, please?

12 A. I will search for it.

13 Q. And I will just ask if it does exist,
14 you just produce it to us. That would be great.
15 Thank you.

16 How did you send P-16 to Ms. Love? Is
17 it an e-mail or is this a memorandum you handed it to
18 her?

19 A. I believe I sent it by e-mail. I'm just
20 not sure.

21 Q. Now, when you received P-15, Ms. Love's
22 letter, did you conduct any investigation into the
23 contents of P-15?

24 A. No.

25 Q. Did you ask anyone any questions about

1 review of the facts that led to Ms. Love's discipline
2 in April 2010. See that?

3 A. Yes.

4 Q. Okay. Was that the first time you
5 reviewed the facts concerning the April 2010 warning?

6 A. I don't recall.

7 Q. Okay. Now, Ms. Love had sent you a
8 letter, complaint letter, on April 26, 2010. That
9 was regarding the -- what she considered to be
10 retaliatory warning on April 23rd, 2010. Do you
11 recall that?

12 A. I do.

13 Q. Okay. So had you looked into her
14 complaints back in April 2010?

15 A. I had.

16 Q. Okay. Why didn't you respond to her
17 April 26, 2010 complaint letter when she sent it to
18 you?

19 A. I don't recall.

20 Q. Is there any investigation you did
21 beyond what's contained in P-16?

22 A. No.

23 Q. Okay. I will retrieve those documents
24 from you. Thanks.

25 Let me show you P-16 A. P-16 A is an

1 surprised?

2 A. I don't recall.

3 Q. So is it fair to say, whatever Ms.
4 McDonough's reaction was or response was, it wasn't
5 something that registered with you where you remember
6 it today. Is that a fair statement?

7 A. That's fair.

8 Q. Tell me what the reasons were for Ms.
9 Love's termination?

10 A. I believe what I stated before was that
11 I -- Ms. Love had accused an employee of retaliation
12 and of being part of a fraudulent activity. And then
13 later denied that it was true.

14 Q. And was there any other reason for
15 terminating Ms. Love other than what you testified
16 to?

17 A. No.

18 Q. Were the reasons for Ms. Love's
19 termination documented?

20 MR. KLUGER: Objection. Asked and
21 answered. You can answer.

22 A. I don't recall.

23 Q. All right. I'm going to show you what's
24 been marked as P-37. Which appears to be your
25 Responses to Plaintiff's First Set of

1 on September 20th, 2010?

2 A. I don't recall it, but it's here so...

3 Q. No reason to dispute that you received a
4 complaint on September 2, 2010?

5 A. That's correct.

6 Q. And Maribel Rodriguez and Nellie
7 Gourzis, N-E-L-L-I-E, G-O-U-R-Z-I-S, are the two
8 employees, in Ms. McDonough's opinion, had made
9 illegitimate complaints about Ms. Love; is that
10 correct?

11 A. That's correct.

12 Q. Was there any disciplinary action taken
13 against Ms. Rodriguez or Ms. Gourzis for making their
14 complaints?

15 A. I believe one of them was terminated
16 for -- basically, for their lack of performance. And
17 the other one was suspended.

18 Q. But were either of them disciplined in
19 any way for making illegitimate complaints about Ms.
20 Love?

21 A. I don't recall.

22 Q. Was there any investigation done into
23 Ms. Rodriguez and Ms. Gourzis pertaining to the
24 complaints they made?

25 A. That would have been the HR Director.

EXHIBIT "E"

1 the facility manager, I think IT at the time reported
2 to him. Social Security maintenance and everything
3 with the Director of Operations.

4 Q. And --

5 A. I'm sorry. Also purchasing and -- no.
6 At the time it wasn't purchasing. Now it's
7 purchasing as a CFO. My mistake.

8 Q. And was Maureen McDonough Ms. Love's
9 direct supervisor during 2010?

10 A. Yes.

11 Q. To whom did Ms. McDonough report?

12 A. To me.

13 Q. So you also had supervisory authority
14 over Ms. Love?

15 A. Yes.

16 Q. And who had the authority to hire Ms.
17 Love?

18 A. The way the policy read in North Hudson,
19 is basically the president, CEO is the person
20 responsible for all the hiring and firing.

21 Q. And 2010, Ms. Love's position was
22 Director of Health Information Management and Privacy
23 Officer, right?

24 A. Yes.

25 Q. What were her duties as Director of

1 Q. Just for the record.

2 A. No problem.

3 Q. And in that capacity, Oristela was
4 involved in the development of HIPAA policies and
5 procedures; is that correct?

6 A. Yes.

7 Q. And training of the staff and HIPAA
8 privacy and confidentiality laws?

9 A. Yes.

10 Q. And conducting investigations in any
11 complaints of HIPAA violations?

12 A. Yes.

13 Q. Were you aware that Oristela did not
14 have a clinical background?

15 A. Yes.

16 Q. And Oristela's position did not require
17 that she have a clinical background; isn't that
18 correct?

19 A. Correct.

20 Q. And Oristela was not part of the
21 clinical staff at the health center?

22 A. No.

23 Q. And now what was the organization of the
24 departments during Oristela's employment in 2010 time
25 period?

1 who told me. I'm not sure if it was Oristela or
2 Maureen.

3 Q. Okay. Do you know what blood tests were
4 conducted?

5 A. I don't.

6 Q. Did you know why any blood tests were
7 conducted?

8 A. No.

9 Q. Do you know what medical condition the
10 patient had for which the blood tests were order?

11 A. No.

12 Q. Do you know what the results of the
13 blood tests were?

14 A. No.

15 Q. Do you know if the delay in the
16 patient's blood work posed any risk to the patient's
17 health?

18 A. No, I don't know.

19 Q. That would be an important quality of
20 care issue?

21 MR. RAY: Objection to form.

22 A. I'm not qualified to make that kind of
23 determination. I have no idea what was there.

24 Q. Well, when the health center wanted to
25 investigate that issue --

1 A. Well, I think the health center would
2 investigate to find out why the -- whether the blood
3 test was missing or the chart was missing. As it
4 appears from here, the chart wasn't missing based on
5 what's there.

6 Q. Well, whether the delay in not having
7 the blood tests available when the patient was there
8 posed any risk of harm to that patient, that would be
9 a clinical determination, wouldn't it?

10 A. I'm not sure.

11 Q. A person without a clinical background
12 could make that determination whether or not it posed
13 a risk to the patient?

14 A. Whether the blood work was there or not,
15 I think it would have to be a clinical person to make
16 that determination as to if the doctor needed the
17 blood work to continue treatment.

18 Q. So in order to properly respond to the
19 complaint, the health center would need to
20 investigate that clinical issue?

21 MR. RAY: Objection to form.

22 A. Well, that's -- in my mind this is not a
23 clinical issue. This is a paperwork issue.

24 Q. All right. But you just said there was
25 a clinical issue.

1 Q. If she were asked to evaluate something
2 requiring an evaluation of clinical information and
3 to sign off on that, would you agree that would be
4 unethical?

5 A. I would agree that's outside of her
6 scope. Just like it would be outside of my scope of
7 education.

8 Q. But the question was, would you agree
9 that would be unethical?

10 A. Rephrase it, please. Or say it again
11 please.

12 (The reporter reads back the requested
13 portion.)

14 A. If she was asked to evaluate and sign
15 off on it, yes, that's not her background. Yes.

16 Q. And it would violate hospital quality of
17 care standards if a person without clinical
18 qualifications completes a report requiring
19 evaluation of clinical information?

20 A. If she was asked to evaluate, yes.

21 Q. Isn't it true that Oristela had never
22 prepared that kind of report prior to the Horizon
23 report?

24 A. I don't think that's true.

25 Q. Can you give me an example of a prior

1 found, and their test results are found. That delay
2 in time, wouldn't that involve a medical issue?

3 MR. RAY: Objection to form.

4 A. I don't know that that involves a
5 medical issue. I don't think I'm qualified to answer
6 that.

7 Q. Then why aren't you qualified to answer
8 that?

9 A. I'm -- I can't make -- can I make a
10 determination? I don't think so. Whether that
11 patient could be seen. I'm sure there are instances
12 when a patient can be seen with or without the
13 paperwork. I don't know.

14 Q. So that would have to be investigated to
15 determine whether or not that was an issue that
16 touched upon the risk of health to the patient?

17 MR. RAY: Objection to form.

18 A. That's not the letter.

19 Q. You just said you don't know yourself by
20 reading this letter. That that was something that
21 would have to be investigated then, wouldn't it?

22 MR. RAY: Objection to form. You're
23 being confusing with your questions.

24 Q. Well, let's start over then. If I were
25 to go to North Hudson and my chart and my results are

1 not available, and then I'm told that I have to come
2 back on another date, wouldn't that impact or
3 couldn't that impact upon my health?

4 MR. RAY: Objection to form. He's not
5 qualified to answer that.

6 A. I don't know.

7 Q. I'm not asking whether or not -- isn't
8 that an issue that a medical person would have to
9 determine whether or not that has any impact upon my
10 health?

11 A. A medical person would have to, I think,
12 make that determination if there was a delay.

13 Q. Okay. And also the JCAHO regulations
14 that you talked about, does JCAHO come and do
15 periodic audits at North Hudson?

16 A. They come in once every three years.

17 Q. And if they were to come and do an
18 audit, do they check to see whether or not medical
19 records and charts are in the patient's record? Is
20 that something they review as part of their audit?
21 Do they check medical records, that medical records
22 are in the chart?

23 A. Medical records are in the chart? The
24 medical record is the chart.

25 Q. I'm sorry. That the medical record is

1 recall discussing at that meeting?

2 A. Oristela asked me a question. Did I
3 think it was proper for her to respond to, I don't
4 know if she said clinical or medical request. Since
5 she does not have the training and she is not
6 qualified.

7 Q. What was your response?

8 A. My response was no, I didn't think that
9 if she wasn't qualified medically, that she, no, she
10 should not respond.

11 Q. Do you recall anything further that you
12 discussed at that meeting?

13 A. I don't. I'm sorry.

14 Q. Do you recall saying to her words to the
15 effect, "I can see that you did not back off"?

16 A. I'm sorry. I don't remember.

17 Q. Did you, do you recall discussing with
18 Oristela she had prepared an initial investigation?

19 A. Initial investigation to this issue?

20 Q. Into the Horizon complaint?

21 A. I'm sorry. I don't remember that.

22 Q. Did you discuss with Oristela, and you
23 may have, what you just testified to, but just to be
24 clear, she did not have a clinical background and
25 therefore did not feel qualified to complete a report

1 in response to the Horizon complaint?

2 MR. RAY: Objection to form.

3 A. Basically, yes. I will repeat what I
4 think I said, which was that if it was a medical
5 issue and she is not a medical person, that she
6 should not respond.

7 Q. Is there -- was there a computer, do you
8 remember, located in the office where you were
9 sitting?

10 A. If it was not Dr. Vereas office, there
11 would have been. I'm not sure if that's where we
12 were.

13 Q. Did you review any e-mails during that
14 meeting?

15 A. To my recollection...

16 Q. Do you recall looking at any computer
17 and reviewing any e-mails on a computer in the senior
18 management office?

19 A. I don't.

20 Q. Was there anyone else with you during
21 that discussion?

22 A. I don't think so. I think it was just
23 Oristela and I.

24 Q. All right. Okay. I will show you a
25 document that's been previously marked as Exhibit

1 A. Depends on what the issue is.

2 Q. Let me finish the entire question. Did
3 you mean that she should have a team which includes
4 clinical employees to work on investigating or
5 responding to a patient complaint like the Horizon
6 complaint?

7 A. No.

8 Q. When you had these discussions with Ms.
9 McDonough, was it in reference to the Horizon
10 complaint?

11 A. It was as a result of this, yes.

12 Q. And did you discuss with Ms. McDonough
13 the procedure for responding to complaints such as
14 the Horizon complaint?

15 A. I don't think I discussed the procedure.

16 Q. Did you discuss how to respond to such
17 complaints going forward?

18 A. No.

19 Q. Well, part of what you just testified,
20 was that you told her she should have an -- assign
21 specific people to do specific things. Isn't that
22 part of the procedure, how to respond to complaints?

23 A. If you're talking about as a result of
24 the conversation, what I told her was, it's not about
25 any specific. It's not limited to just a complaint.

1 If she needs something done, then she should just
2 assign someone to do it. It had nothing to do with a
3 complaint, future complaint or the regular day-to-day
4 work. It could include anything.

5 Q. But your conversation arose out of the
6 issues surrounding the Horizon complaint, preparing a
7 report to the Horizon complaint; is that correct?

8 A. Correct.

9 Q. And did you discuss with Ms. McDonough
10 setting up a meeting that should take place to
11 discuss Ms. Love's concerns regarding the issues
12 surrounding the Horizon complaint?

13 A. Yes. I believe we set up a meeting.

14 Q. Whose idea was it to set up that
15 meeting?

16 A. It arose out of a conversation between
17 Maureen and I, so I'm not sure.

18 Q. So it was either Maureen or you?

19 A. Yes.

20 Q. Were there any e-mails exchanged between
21 you and Ms. McDonough regarding setting up that
22 meeting?

23 A. I don't believe so.

24 Q. And did that meeting take place on
25 April 23rd, 2010?

1 the e-mails so I know people were informed of the
2 issue. But as far as what was transpiring in real
3 time, I don't know.

4 Q. Do you have any reason to believe any of
5 those e-mails are not authentic?

6 A. The e-mails, no.

7 Q. Looking down at number eight. Oristela,
8 after the EMR meetings, she handled the record and
9 initial investigation. She gave to Maria Aguilera to
10 complete report since clinical information needed to
11 be discussed, addressed and put into the report.
12 Would you agree with that?

13 A. That that happened, I wouldn't know.

14 Q. Do you agree, clinical information
15 needed to be discussed, addressed and put into the
16 report?

17 A. No.

18 Q. And in the next number nine, Maureen
19 joined the group, reviewed the record and informed
20 the group what she wanted in the report, statement
21 Maria Aguilera handed me the notes, said here,
22 Oristela. Are you aware whether that occurred?

23 A. I'm not.

24 Q. Are you aware that Oristela felt that
25 she was unable to put together a patient care, slash,

1 services investigation report since her background is
2 not clinical?

3 A. Well, at some point I know that that was
4 Oristela's reason for not writing the letter.

5 Q. Are you aware that Maureen picked up the
6 information and record and went into her office to do
7 the report?

8 A. I know Maureen wrote the report.

9 Q. Did you -- are you aware of whether or
10 not Nishie and Oristela and Maureen reviewed the
11 report before it was mailed out?

12 A. I don't know.

13 Q. Did you discuss anything related to the
14 contents of page two of Exhibit 6 with anyone other
15 than your attorney?

16 A. Page two? This page?

17 Q. What we've just gone over.

18 A. This page?

19 Q. Yes. I'm sorry.

20 A. I'm sure there are some points in here
21 that were addressed at our meetings as to what
22 transpired, whether it was a conversation with
23 Oristela, Maureen.

24 Q. Do you recall any specific conversations
25 you had regarding any of these issues contained on

1 Q. Okay. Now that you understand the
2 question.

3 A. Okay. That's why I had to stop for
4 coffee. No. I don't think they were as qualified as
5 sending the people to the ECW. No.

6 Q. And would Oristela be able to obtain the
7 same certification from the in-house training as with
8 the ECW training?

9 A. No. I don't believe we would have been
10 able to give her a certification, no.

11 Q. Do you think that as Director of HIM and
12 her responsibilities with electronic health records
13 which is stated in her job description, that Oristela
14 should have been sent to that certification training?

15 A. I think with the train the trainer plan
16 that we had, that was the best, most efficient.

17 And from a budgetary standpoint, it was
18 the best way we could try to do the implementation.
19 It was the first time we have -- it was the first
20 time the implementation of electronic medical record.
21 So what we were trying to do was come up with a plan
22 that worked.

23 Q. Well, my question was, do you think
24 Oristela in her position, with her responsibility,
25 should have been sent to the training?

1 A. Maybe at some point.

2 Q. Do you think that Oristela as Director
3 of HIM would have benefited from being able to attend
4 the training?

5 A. She might have benefited.

6 Q. I'm showing you a document marked as
7 Exhibit P-11. Take a minute to read that.

8 A. Okay.

9 Q. Do you recall being copied on this
10 e-mail?

11 A. Yes.

12 Q. And this e-mail was from Ms. Love for
13 assistance with addressing Nellie Gouzis' poor
14 performance and requesting overtime approval for two
15 employees to do Ms. Gouzis' work?

16 A. Yes.

17 Q. Reflects Ms. Gouzis' backlog of unfiled
18 reports had by that time risen to 618?

19 A. Uh-huh.

20 Q. Was this the first time that you were
21 aware of any performance issues with Ms. Gouzis?

22 A. I don't remember. There may have been
23 other times. It depends if it rose to what kind of a
24 level.

25 Q. And Ms. Gouzis was one of the clerks

1 what was going on with Nellie.

2 Q. Would it have been to address her
3 complaints of retaliation in her letter of
4 November 2nd to Ms. Kimble which was marked as
5 Exhibit P-14?

6 A. It could have been.

7 Q. At this meeting did you inform Ms. Love
8 there was no merit to her complaints of retaliation
9 reflected in the letter to Barbara Blake Kimble dated
10 November 2nd?

11 A. I can say a hundred percent, I don't
12 have a clear recollection. But I know I spoke words
13 to that effect.

14 Q. Okay. So then you does that refresh
15 your recollection that you would have reviewed
16 Exhibit 14 prior to that meeting?

17 A. I may have.

18 Q. At that meeting, did McDonough inform
19 Ms. Love also there was no merit to her complaints of
20 retaliation as reflected in Exhibit 14?

21 A. I believe she did.

22 Q. And at that meeting did Mr. Irizarry
23 also inform Ms. Love there was no merit to her issue
24 of retaliation in Exhibit P-14?

25 A. I believe so.

1 Q. Did you do anything?

2 A. No, I didn't.

3 Q. Did Mr. Irizarry ask Oristela to provide
4 a rejection letter of the warning letter at that
5 meeting?

6 A. A rejection of the warning letter?

7 Q. Yes. I don't know if that's the exact
8 words he used, but a letter for her reasons why the
9 warning letter should be rejected?

10 MR. RAY: What warning letter?

11 Q. The warning. The April 23rd warning.

12 A. I'm sorry. Now, could you rephrase it?

13 Q. Did Mr. Irizarry ask Oristela to provide
14 something in writing with regard to --

15 A. I don't know.

16 Q. -- the --

17 A. I'm sorry.

18 MR. RAY: Let her ask the question.

19 Q. Do you know whether the warning was
20 ever -- I think I asked you that earlier. Removed
21 from her file?

22 A. I don't believe it was.

23 Q. Did you say during that meeting that
24 Oristela's allegations were strong and she should not
25 have used the word "retaliation" in her letter?

1 A. Yes. I told her that her allegation was
2 strong and I used the word hurtful. And that's why
3 Maureen was so upset.

4 Q. And she shouldn't have used the word
5 "retaliation"?

6 A. I may have said that.

7 Q. And at this meeting, did Oristela refuse
8 to retract her complaints of retaliation reflected in
9 Exhibit 14?

10 A. I haven't seen a retraction so I will
11 say she has not retracted it.

12 Q. Do you recall at the meeting she refused
13 to retract her complaint of retaliation?

14 A. I recall her not saying much.

15 MS. FONER: Take a two-minute break.

16 MR. RAY: Sure.

17 (Whereupon a break was taken.)

18 Q. During the break did you have any
19 conversations with your counsel regarding your
20 testimony?

21 A. No.

22 Q. I just want to ask you again about the
23 in-house training for the electronic records.

24 You said that the two employees who went
25 to the training came back and did in-house training.

1 Q. Who would know that, her qualifications?

2 A. I guess HR would have something in her
3 file.

4 MS. FONER: Off the record.

5 (Whereupon a discussion takes place off
6 the record.)

7 Q. Does Maria Rigual serve as Privacy
8 Officer also?

9 A. No.

10 Q. Who took over those functions?

11 A. Right now it's vacant.

12 Q. After the April 23rd, 2010 warning, was
13 Oristela given any other counseling or discipline?

14 A. I'm sorry?

15 Q. After she was given the warning on
16 April 23rd, 2010, did she receive any other
17 counseling?

18 A. Not to my knowledge, no.

19 Q. Was she given any other warning or other
20 form of discipline?

21 A. No.

22 Q. In fact, that was the only discipline
23 that Oristela had received in her entire 16 years at
24 North Hudson; is that correct?

25 MR. RAY: Objection to form. You can

1 answer the question.

2 A. Having looked through her file, I didn't
3 see anything else. I'm not aware of anything else.

4 Q. And so there was no further discipline
5 between April 23rd, 2010 warning and her termination
6 in November 19th, 2010?

7 A. No.

8 Q. How was Oristela's performance?

9 A. I can go -- I can tell you just about
10 her evaluations, which were generally "exceeded
11 expectations" most of the categories. Some of the
12 categories was "meets expectations".

13 Q. I show you what's been marked as Exhibit
14 P-32A. That's the employee handbook. And you don't
15 need to look at the entire book. I will just refer
16 to some specific sections I want to ask you.

17 In general, are you familiar with the
18 employee handbook that's been marked as P-32A?

19 A. Yes.

20 Q. If you want to just look at it briefly,
21 can you tell me whether this was the version that was
22 in effect in 2010?

23 A. I believe so.

24 Q. Okay. If you look on page 47 of the
25 handbook, there is a section there on

EXHIBIT “F”

1 Love?

2 A. It was before my time. I don't know.

3 Q. Who had the power to terminate Oristela

4 Love?

5 A. The president of the organization and
6 the Board of Directors.

7 Q. And who had the power to discipline
8 Oristela Love?

9 A. Myself, Michael Shabbab, Christopher
10 Irizarry and the Board of Directors.

11 Q. Did discipline have to be approved by
12 the Board of Directors prior to it being imposed upon
13 Oristela?

14 A. No. Not to my knowledge, in that case.

15 Q. So in what cases would the Board of
16 Directors be involved in disciplining Ms. Love?

17 A. They're just the governing body. I
18 don't believe -- I don't know, to my knowledge, if
19 they ever were involved in a director level
20 discipline. Certainly senior management level they
21 were.

22 Q. And who had the authority or power to
23 hire you at North Hudson?

24 A. I don't know.

25 Q. If you know, who had the authority to

1 Q. So you reviewed the record in order to
2 respond to the Horizon complaint?

3 A. I reviewed the record to ensure that
4 everything was in order in terms of the quality of
5 the record. At the time that's what I did.

6 Q. You determined that the delay caused no
7 harm to the patient's health?

8 A. I did.

9 Q. And you did that based upon your
10 clinical experience?

11 A. Yes.

12 Q. Oristela does not have clinical
13 experience?

14 MR. RAY: Objection.

15 A. She does not.

16 MR. RAY: Asked and answered.

17 Q. So Oristela would not then be able to
18 determine whether or not the delay in the patient's
19 lab results being available caused any potential
20 patient health risk?

21 A. No, she would not.

22 Q. And would you agree it would be
23 unethical to prepare a report requiring such an
24 evaluation of clinical information if one does not
25 have a clinical background?

1 MR. RAY: Objection to form.

2 A. Could you read it back?

3 (The reporter reads back the requested
4 portion.)

5 A. I don't believe that what was prepared
6 was a clinical report or evaluation on this
7 complaint.

8 Q. Well, that wasn't the question.

9 (The reporter reads back the requested
10 portion.)

11 MR. RAY: When you use such -- I think
12 you're indicating the Horizon report, so that's why.

13 Q. Fair enough. Do you agree it would be
14 unethical to sign off on a report requiring
15 evaluation of clinical information if one had no
16 clinical background?

17 MR. RAY: Any report that required
18 clinical analysis, you're saying.

19 A. Yes.

20 Q. And you evaluated the lab results to
21 determine whether or not the delay caused any
22 potential risk of harm to the patient; correct?

23 A. Correct.

24 Q. And that was the evaluation that
25 required clinical background?

1 A. Yes.

2 Q. Would you agree it would violate quality
3 of care standards if a person without clinical
4 qualifications completed a report requiring
5 evaluation of clinical information?

6 MR.. RAY: Seems like the same one she
7 just answered, but you're looking for a generic
8 report. Not the Horizon, right?

9 Q. Would you agree it would violate quality
10 of care standards if a person without clinical
11 qualifications completed a report requiring
12 evaluation of clinical information?

13 A. Evaluation of clinical information, yes.

14 Q. Would you agree that in order to
15 properly respond to the Horizon complaint, North
16 Hudson would need to investigate or evaluate the
17 clinical issue of whether the delay in not having the
18 patient's test results in a timely fashion posed any
19 risk to the patient's health?

20 A. Yes.

21 MS. FONER: Can you mark that?

22 (Whereupon P-4, E-mail, was received and
23 marked for identification.)

24 Q. I am showing you P-4. If you can take a
25 look at that. It's a series of e-mail chains with

1 MR. RAY: I'm sorry. I didn't hear you.

2 Q. On April 20, 2010, did you speak with
3 Michael Shabbab regarding Oristela?

4 MR. RAY: You just said April 20th.

5 Q. April 21st, 2010. The next day after
6 the date of P-4A.

7 MR. RAY: Okay.

8 A. I'm sure I did. I don't recall that
9 day.

10 Q. Do you recall if you had a discussion
11 with Mr. Shabbab regarding Oristela in person or on
12 the telephone?

13 A. I don't recall.

14 Q. Okay. Do you recall discussing with
15 Mr. Shabbab that Oristela had refused to complete the
16 response to the Horizon complaint?

17 A. Yes, I discussed the incident with
18 Mr. Shabbab. I just don't recall when it was.

19 Q. What did you discuss with Mr. Shabbab
20 during that conversation?

21 A. The nature of what happened.

22 Q. Can you be more specific?

23 A. The detail of what we just discussed.
24 That we were all in the room together, and that we
25 were reviewing the records, and that I asked Oristela

1 to take a stab at the first pass of the letter, and
2 that she said no, and that I then had to do the
3 letter. And that I spoke to him about how we could
4 work to bring the team together so that we could move
5 forward and not have what happened yesterday or
6 earlier that day occur again.

7 So it was the nature of the incident
8 that I discussed and how do we move forward now.

9 Q. During that discussion, did you have any
10 discussions regarding Oristela not having a clinical
11 background?

12 A. No.

13 Q. Did Mr. Shabbab discuss that with you at
14 all?

15 A. No.

16 Q. Did you discuss with Mr. Shabbab the
17 procedure for responding to complaints such as the
18 one received by Horizon?

19 A. The process?

20 Q. Yes.

21 A. Probably. Yes.

22 Q. What did you discuss with respect to how
23 to respond to such complaints going forward?

24 A. That we discussed basically that the
25 communication had broken down and we didn't

1 clinical?

2 A. That she didn't want to write the
3 letter.

4 Q. I'm not sure I follow your response.

5 A. I agree. That was the response. It was
6 clinical is what Oristela said.

7 Q. And what did you understand to mean it
8 was clinical? What was it that she was referring to?

9 A. It was someone else's responsibility
10 other than her's.

11 Q. Because they had a clinical background?

12 A. No. Just that it was someone else's
13 responsibility other than her's.

14 Q. What did clinical refer to then?

15 A. She wanted somebody that was of a
16 clinical nature to write the letter instead of
17 herself.

18 Q. Why would that be?

19 A. Because she didn't want to write the
20 letter.

21 Q. Would it be because she didn't -- why
22 would she want someone with a clinical nature to
23 write the report as opposed to somebody else?

24 A. Usually it happened in the past -- in
25 the past, Oristela and Nishie would have worked

1 together on that. And I think then they -- she would
2 have had a better comfort level if her and Nishie
3 drafted the letter together, and then I reviewed it
4 and then I signed it would have made everybody
5 happier.

6 Q. I think you're getting beyond what I
7 asked.

8 (The reporter reads back the requested
9 portion.)

10 A. It would have made her more comfortable.

11 Q. Why do you think it would make her more
12 comfortable?

13 A. That was always her history in the past,
14 that she would work with Nishie. Collaboratively and
15 jointly on things that were produced.

16 Q. Why would she be uncomfortable to not
17 have a clinical person do a report?

18 A. I don't know why she would be
19 uncomfortable, but I would only say just from their,
20 you know, what your previous experiences have been is
21 what makes you either comfortable in a situation or
22 not.

23 In the past she always had her
24 compatriot to work with, which was Nishie, who was a
25 clinical person. They would work together. That

1 made both of them comfortable. As long as I was the
2 one signing it, then everyone was comfortable. That
3 was the history up until that point.

4 So I would say that's what Oristela
5 needed in that particular moment, which is why I
6 asked her, let me know what resources you need.
7 Because usually it always they would have worked it
8 out together. And it would have been done. It never
9 would have been an issue. On this moment in time it
10 was an issue. That my best explanation.

11 Q. So Oristela said it was clinical at the
12 meeting. And your testimony then is that that
13 referred to her wanting Nishie, who is a clinical
14 person, to do the clinical portion of the report?

15 MR. RAY: Objection to form. It's not
16 her testimony.

17 Q. If that's not correct then --

18 A. That is correct. That is correct. That
19 is correct.

20 Q. And at the meeting did Oristela say
21 anything about not having the necessary clinical
22 background in order to complete the report?

23 A. No, she did not.

24 Q. Was the issue of clinical -- strike
25 that.

1 Q. Let me finish the question before you
2 answer. It's really important to keep a clean record
3 and it's hard for the reporter to take things down if
4 you're talking over me.

5 (The reporter reads back the requested
6 portion.)

7 Q. Is the certification training the
8 outside training that you're referring to that
9 Oristela did not request to participate in -- leave
10 it with the first part. Is the certification
11 training that's in the e-mail, training, the outside
12 training that you were just referring to?

13 A. Yes.

14 Q. So Oristela did request that she be
15 permitted to attend that training?

16 A. She sent an e-mail. We did not have a
17 discussion, which was your prior question.

18 Q. Okay. So did Oristela request by e-mail
19 whether she be permitted to attend that training?

20 A. Yes, there is an e-mail.

21 Q. And was Oristela permitted to attend
22 that training?

23 A. No, she was not. The organization
24 decided that the MBA Sarah Hacker we hired and Robert
25 was the best way for the buck. And we would then

1 roll it out with a train-the-trainer throughout the
2 organization.

3 Q. Who made the decision in the
4 organization? Which senior management in the
5 organization made the decision that Oristela could
6 not attend the training?

7 A. All of senior management. It was a
8 discussion at one of the senior management meetings.
9 I'm sure we discussed it, who was going to go, as a
10 collective decision.

11 Q. Who is part of the senior management at
12 that time? Who was part of the senior management at
13 that time?

14 A. August of 2010, Christopher Irizarry,
15 Michael Shabbab. I'm not sure if the CFO was there
16 or not. Theresa Fomer could have been there or
17 fired. Vincent Ergola, myself, Rosemarie Lavnino
18 (phonetic) Director of CAP, could have been Maria --
19 no, they weren't senior managers. Then that's it.

20 Q. So your testimony is that one of the
21 individuals who --

22 A. Oh, HR. Director of HR.

23 Q. All those individuals that you just
24 mentioned were involved in the decision denying
25 Oristela's request to attend the outside training?

1 MR. RAY: Objection to form.

2 A. No, not all of them at the same time
3 wouldn't have been included in it. A decision of
4 that would have been Vincent Ergola, Director of
5 Operations that IT reported to. Michael Shabbab was
6 either COO or CFO at the time. Terry would have been
7 CFO, consulted about how much money we could have
8 spent. Myself as the director, you know, supervisor
9 and -- wouldn't involve the Director of CAP, wouldn't
10 involve HR.

11 Q. Did you say Terry?

12 A. Yes.

13 Q. Who is Terry?

14 A. She might have been the CFO at the time.

15 Q. What about Mr. Irizarry? Did he have an
16 involvement in denying Oristela's request to attend
17 the training?

18 A. Of course.

19 Q. Now, the e-mail that was just marked as
20 P-7A to you, requesting that -- by Oristela
21 requesting the training, did you then bring that to
22 anyone's attention?

23 A. No. Why would I have?

24 Q. Well, you just said, how did those other
25 individuals who were involved in the decision come to

1 A. To make Oristela aware of what really
2 was happening.

3 Q. Was it to address complaints of
4 retaliation that Oristela had raised whether or not
5 you believed them?

6 A. It was to let Oristela know that no one
7 was retaliating against her. That they were apples
8 and oranges we were talking about. That that was not
9 what was really happening. We wanted to have
10 Oristela understand that the dynamic of what we were
11 looking into was on her behalf.

12 Q. At this meeting, did Oristela refuse to
13 withdraw or retract her complaints of retaliation?

14 A. No one at that meeting asked her. We
15 had a dialogue saying that is an inappropriate thing
16 to accuse a member of Senior Management of
17 retaliating against you and putting such a thing in
18 writing. Because it never happened.

19 And we were trying to get Oristela to
20 understand that that's not what was going on at the
21 moment. That wasn't what was going on.

22 Q. So okay. So you have P-15 in front of
23 you as well. Have you ever seen that document
24 before?

25 A. Monday.

1 come to some other solution to have it work out.

2 That's what I said.

3 Q. Did you discuss or ask anything with
4 regard to the reasons for the termination?

5 A. No. I believe I already knew what the
6 reasons were. And that was that she refused to be a
7 team player and come along and understand. That
8 there wasn't any retaliation going on.

9 So I always believed that that was it.
10 That, you know, she had made an accusation against
11 myself and she was not going to understand that it
12 didn't happen. And I thought that that's what it
13 was. I didn't know what happened with Christopher
14 Irizarry with the president to help him make that
15 decision.

16 And I see in here the conversations that
17 were had from reading this on Monday. So for me,
18 that's what I thought it was. We had come to that
19 point in the road.

20 Q. So if Oristela had said that she
21 understood that there wasn't any retaliation, then
22 she -- it's your understanding she would not have
23 been terminated?

24 A. I don't know. I don't know. Because I
25 wasn't privy to why Christopher Irizarry terminated

1 the term "counseling".

2 Q. Okay. How about this. After the April
3 23rd, 2010 warning, did Oristela receive any other
4 discipline up until the time of her termination?

5 A. No.

6 Q. Did she receive any other warning?

7 A. No.

8 MR. RAY: Objection to form.

9 Q. In fact, was the April 23rd, 2010
10 warning the only discipline that Oristela received in
11 her entire 16 years at North Hudson?

12 A. From me.

13 Q. So to your knowledge --

14 A. Yes.

15 Q. In general, how would you describe
16 Oristela's performance during her employment at North
17 Hudson while you were her supervisor?

18 A. Her performance, she had good
19 performance.

20 Q. Okay. I have a bunch of documents that
21 have to be marked. All right. P-17.

22 (Whereupon P-17, Evaluation Form, was
23 received and marked for identification.)

24 (Whereupon P-18, Evaluation Form, was
25 received and marked for identification.)

EXHIBIT “G”

1 A. Yes.

2 Q. And the first listed experience is
3 professor of medical records. See that?

4 A. Yes.

5 Q. You were a professor of medical records?

6 A. Yes.

7 Q. At appears to be three different
8 universities?

9 A. Yes.

10 Q. Okay. And then below that says
11 coordinator and processor of medical records and
12 biostatistics at -- that's not university, I guess
13 that's some Government ministry in the Dominican
14 Republic?

15 A. Yes, that was. Yes.

16 Q. And then you have an article published
17 on Rules and Procedures For Medical Records?

18 A. Yes.

19 Q. And I assume that was published in the
20 Dominican Republic?

21 A. Yes.

22 Q. Is that the only article you have
23 published on the subject of medical records?

24 A. Yes.

25 Q. If you turn, please, back just to the

1 Q. Now, you mention like financial records
2 might be in a medical record. I'm assuming that's
3 not clinical data?

4 A. In some places that could be included.
5 Some places probably do not include financial data.

6 Q. Is this fair that documents that contain
7 references to diagnostic testing, lab work, treatment
8 notes, that's in the nature of clinical data?

9 A. Those are clinical information.

10 Q. Clinical information contained within
11 medical records?

12 A. Yes.

13 Q. Now, is -- in your experience, is any
14 medical recordkeeping system perfect?

15 A. No.

16 Q. Just by human nature, is this a fair
17 statement: No matter how good a recordkeeping system
18 is, inevitably there's going to be some mistakes?

19 A. Yes.

20 Q. And mistakes such as a lost record or
21 misfiled record?

22 A. Yes.

23 Q. I imagine the better the system, the
24 least likely mistakes like that occur?

25 A. Yes.

1 A. At one point I was asked to develop my
2 budget. But within the last three years I wasn't
3 doing it.

4 Q. Who did it?

5 A. My supervisor.

6 Q. What was Maureen McDonough?

7 A. Yes.

8 Q. She was your direct supervisor?

9 A. She was.

10 Q. She was the clinical director?

11 A. She was.

12 Q. And for how long up until those last
13 three years had you been responsible for the
14 department's budget?

15 A. Yes.

16 Q. For how long?

17 A. I did the department budget, probably I
18 would say, like, three, four, five years. Around
19 then.

20 Q. Do you know why she started doing it
21 instead of you?

22 A. No.

23 Q. You were never given a reason?

24 A. No.

25 Q. Did you ever complain about you're not

1 Q. And were you responsible for reaching a
2 conclusion as to the cause of that HIPAA violation?

3 A. Not to write a conclusion. Just to
4 investigate.

5 Q. What would -- would your investigation
6 involve speaking with the employees involved?

7 A. Investigation was in the department
8 where the issue happened, the coordinator -- meeting
9 with the coordinator and ask the coordinator what
10 happened.

11 Q. And would you take notes with regards to
12 this investigation?

13 A. I believe at some point, yes. At some
14 point the coordinator was probably doing.

15 Q. Did you ever make any report, put
16 anything in writing as to --

17 A. I don't recall.

18 Q. Okay. How many of these HIPAA violation
19 investigations did you do?

20 A. I don't recall how many.

21 Q. More than ten over the years?

22 A. I can't tell you off the top of my head
23 how many.

24 Q. In the event of a HIPAA violation, did
25 you make recommendations to correct the system so

1 that there wouldn't be another such violation?

2 A. Yes.

3 Q. In your educational training, what, if
4 any, clinical training have you received?

5 A. None.

6 Q. During your employment at North Hudson,
7 what, if any, clinical responsibilities did you have?

8 A. None.

9 Q. What does the word "clinical" mean to
10 you?

11 A. "Clinical" means providing care to the
12 patient and documenting the care that was provided.

13 Q. Documenting?

14 A. The care that was provided.

15 Q. So you were never involved in providing
16 care?

17 A. No.

18 Q. And you would never have been involved
19 in documenting the care that a clinical person
20 rendered?

21 A. No.

22 Q. Is there anything else that you view
23 that "clinical" means to you?

24 A. No.

25 Q. Now, Maureen McDonough, in your view,

1 today in English?

2 A. Yes.

3 Q. Not that I'm having a problem.

4 A. That's okay.

5 Q. But you're perfectly okay in English?

6 A. Yes, I am.

7 Q. No difficulty understanding me?

8 A. No.

9 Q. So Chris Irizarry, he was the president?

10 A. Yes.

11 Q. You told him at some point that you
12 wanted to take courses in electronic recordkeeping?

13 A. Yes.

14 Q. And what was his response?

15 A. That he wanted me to go -- that he
16 wanted to make sure that I received the training.
17 However, he also mention that Maureen and Alex, who's
18 the IT person, did not want to send me for training.

19 Q. Do you recall when this conversation
20 occurred?

21 A. It happened on the phone. One day he
22 call me. I don't remember the date. And I remember
23 there was July, after vacation, I went to his office
24 to bring him something that I brought him from my
25 vacation. We met at the conference room and he said

1 that to me. I want to make sure you go to the
2 training, but they don't want to send you for
3 training.

4 Q. This is in 2010?

5 A. That was in 2010.

6 Q. Okay. And did you -- is that the last
7 you spoke to him about it?

8 A. Yes.

9 Q. Did you ever discuss that issue with
10 anyone else at North Hudson?

11 A. With Maureen.

12 Q. And tell me about that conversation.

13 A. Maureen, it was by e-mail and Maureen
14 said that she was sending other people that was going
15 to train me after they were trained.

16 Q. Who were the people that were going to
17 be trained?

18 A. She sent a new employee that they hired.
19 Actually Sarah Hicker. And they sent Robert from the
20 IT department to receive the training.

21 Q. And who was Alex?

22 A. Alex is the IT person. Alex.

23 Q. And -- okay. Do you know who made the
24 decision to send Robert and Sarah?

25 A. According to the e-mails, Maureen said

1 it was Alex. That's what Maureen said in one of the
2 e-mails, I believe.

3 Q. Was it your understanding that they were
4 going to get the training and come back and train
5 you?

6 A. Yes.

7 Q. And then were you -- was it your
8 understanding that you would then, in turn, train
9 others?

10 A. I was not under that impression.

11 Q. Who was the Chief Medical Officer during
12 your employment?

13 A. They didn't have one.

14 Q. Was there a -- who's Dr. Vereea?

15 A. A Chief Medical Officer.

16 Q. Is it V-E-R-E-A?

17 A. Yes.

18 Q. He was the Chief Medical Officer?

19 A. Chief Medical Officer.

20 Q. And I thought you said they didn't have
21 one?

22 A. I believe you said chief -- it was not
23 Chief Information Officer, the first question?

24 Q. No, no. I wasn't clear. I meant Chief
25 Medical Officer.

1 object. It calls for her to recollect something
2 that's apparently on a document of a job description
3 that she doesn't have the benefit of looking at.

4 Q. I'm not looking at a job description?

5 MS. FONER: Do you plan on marking it.

6 Q. I do but not yet. She's not having any
7 trouble?

8 MS. FONER: Still, if you have the
9 document, I think it's only fair she has a chance to
10 look at it if you're going to be asking her questions
11 about it. Is it something that was produced in
12 discovery.

13 Q. Oh, yes. Now, at some point during this
14 meeting with Leno and McDonough, did you say to
15 McDonough they were going to use this job description
16 to get you fired?

17 A. No.

18 Q. Did you question why you needed a job
19 description?

20 A. No.

21 Q. Did you say -- did you complain that
22 Maureen McDonough was not communicating with you?

23 A. Yes.

24 Q. Did you ask more compensation based on
25 the new job description?

1 A. More what?

2 Q. More money because of the new job
3 description?

4 A. Yes.

5 Q. Did you say that you could not get all
6 the new things done in the job description because
7 you didn't have enough resources?

8 A. Yes.

9 Q. Did you complain about the lack of
10 support from senior management and Maureen McDonough?

11 A. Yes.

12 Q. All of that. So you are asked in
13 September 2009 --

14 A. Yes.

15 Q. And all that occurred in connection with
16 the new job description that was handed to you?

17 A. Yes.

18 Q. You have no recollection of saying
19 anything to the effect that you felt -- well, let me
20 ask it this way. Do you have any recollection of
21 saying in September 2009 that you felt you were being
22 set up with this new job description?

23 A. No.

24 Q. Did you say anything to the effect that
25 you were being positioned to fail with this new job

1 you to seek a change in the reporting structure?

2 A. She was also speaking to me in a very,
3 like, demeaning.

4 Q. Condescending?

5 A. Yes. Aggressive and intimidating and
6 not giving me the resources that I really need to do
7 my job.

8 Q. What else?

9 A. I don't recall.

10 Q. These things that you have told us
11 about, these pre-September 2009 problems you had with
12 Maureen, intimidating, aggressive, ignoring you,
13 following you, mimicking you, these are the things
14 that caused you to go to the president and ask for a
15 change in reporting structure before September 2009?

16 A. Yes.

17 Q. Now, did you -- was there -- before
18 September 2009, was there anyone else at North Hudson
19 in management that was behaving in a way or treating
20 you in a way that upset you?

21 A. No.

22 Q. It was just Maureen?

23 A. Yes.

24 Q. Now, do you know of anyone else at North
25 Hudson that had similar experiences with Maureen

1 Q. Was it many times?

2 A. Probably a few times.

3 Q. And in response to those complaints, did
4 you get what you wanted? Did you get more money?

5 A. I remember that, yes, I did. In two
6 instances.

7 Q. Was there ever a time where you
8 complained about your compensation that you wanted
9 more money and you didn't get more money?

10 A. Yes.

11 Q. How many times did that happen?

12 A. It was when Maureen change my job
13 description from being responsible of one site or two
14 sites to oversee ten sites. Then I ask her that I
15 was supposed be compensated for that. I didn't get
16 anything.

17 Q. When did that occur?

18 A. That was at evaluation meetings.

19 Q. What year?

20 A. 2009.

21 Q. So let me just summarize this. In
22 2000 -- you became responsible for many more sites?
23 Yes?

24 A. Yes.

25 Q. And that happened in 2009?

1 that?

2 A. No.

3 Q. Was that the only time that you asked
4 for and did not get more money at North Hudson?

5 A. Yes.

6 Q. And you said there were two times that
7 you asked for and did get an increase in
8 compensation?

9 A. And I did get it.

10 Q. And now were you reviewed annually at
11 North Hudson?

12 A. Yes, I was.

13 Q. I will show you, this is D-4 and D-5.
14 I'm not going to ask a great deal of questions about
15 these. It's my understanding D-4 is the last
16 evaluation you received in December 2009. And D-5 is
17 the evaluation you received in December 2008. Does
18 that appear to you to be correct?

19 A. Yes.

20 Q. Now, whose handwriting is in the right
21 column of these?

22 A. Maureen.

23 Q. Okay. And if you look at the scale,
24 there says about a third way down, 4.5 equals
25 "exceeds expectations"?

1 A. Yes.

2 Q. And if you turn, please, to the second
3 page of both of these documents. In each of those
4 years your overall score was "exceeds expectations"?

5 A. Yes, it was.

6 Q. These are very strong evaluations. Is
7 that accurate?

8 A. Yes.

9 Q. Now, was the amount of the raise you
10 would get, did it depend on the rating you would get?

11 A. Yes. I believe that was the policy of
12 the company.

13 Q. Because you did -- is this fair? You
14 filled out similar forms when you evaluated the
15 people that reported to you?

16 A. Yes.

17 Q. Did you have an understanding, depending
18 on the supervisor, the rating the supervisor gives a
19 subordinate, that that was going to be tied to the
20 amount of raise the subordinate gets?

21 A. Yes.

22 Q. Maureen's is the handwriting on both of
23 these D-4 and D-5?

24 A. Yes.

25 Q. She is the one that gave you these very

1 strong "exceeds expectations" ratings?

2 A. Yes.

3 Q. And did these ratings, if you know,
4 result in you receiving an increase in compensation?

5 A. Yes.

6 Q. Now, if you look, please, at the D-4,
7 this is the one with overall score is 46.5?

8 A. Yes.

9 Q. Just to the right of that it says --
10 there is an asterisk. Says, "See conf. Enclosed
11 taking college class on electronic record
12 management". See that?

13 A. Okay.

14 Q. See those words there?

15 A. Uh-huh. Yes.

16 Q. What does that mean?

17 A. It has an asterisk in there. What I
18 interpret by this is she wanted me to take some
19 electronic classes. That's what I see. But I'm not
20 sure what she mean by that.

21 Q. When you -- is there a sit-down meeting
22 with your supervisor when you get this evaluation?

23 A. Yes.

24 Q. So it's not just handed to you, there is
25 a discussion about it?

1 recordkeeping department?

2 A. Yes.

3 Q. How frequently would you do a
4 self-review in that regard?

5 A. I used to do quarterly quantitative
6 record review.

7 Q. What does that mean?

8 A. To look for signatures in the records,
9 if the providers were signing the reports, if they
10 were dated. If by any chance the provider order
11 medications, if that medication was documented in the
12 medication list. Just it was there. Not the quality
13 of the documentation. I used to do that.

14 Q. Is this where statistics comes into
15 play? That you would do like a sampling to see, you
16 take a random sample as to how many randomly pulled
17 files, how many providers signing them?

18 A. Yes.

19 Q. And then you would extrapolate from
20 there in terms to determine whether you really have a
21 problem or not?

22 A. Yes. That was done on a daily basis.
23 Before the records were filed, we used to look for
24 all of that.

25 Q. Were there any kind of sampling or like

1 A. No, I did not.

2 Q. Did you put anything in this letter to
3 indicate that you, for whatever reason, were not able
4 to handle the response?

5 A. No, I did not.

6 Q. Now, if you turn to the next page, this
7 is page two of D-7. I think this is the e-mail
8 you're referring to right in the middle of the page.
9 Perez. On April 19th. That would be three days.
10 The following Monday, she e-mails you and McDonough
11 and ccs the Chief Medical Officer. See that there?

12 A. Yes.

13 Q. And she says, quote, "I spoke with
14 Oristela, this is a patient from WNY Internal
15 Medicine Department, is Yoly and Maria looking into
16 this?" See that there?

17 A. Yes.

18 Q. Who is Yoly?

19 A. Yoly, that's Yolanda Ayala, the
20 coordinator for the Internal Medicine Department.

21 Q. A clinical person?

22 A. Yes. She is a medical assistant.

23 Q. And Maria?

24 A. Maria Aguilera was responsible for that
25 Internal Medicine Department, and she is the nurse

1 practitioner.

2 Q. Okay. Do you have any problem with
3 Perez's response to your e-mail?

4 A. No.

5 Q. Okay. If we turn now the next e-mail,
6 by the way, as we go through these e-mails, if
7 there's some e-mail not in this chain or you remember
8 someone else contributing to this dialogue, let me
9 know.

10 I'm not -- if there are other e-mails
11 out there let me know. But to my understanding this
12 is -- the next e-mail appears to be same day,
13 April 19th, from you. And you send it to Dr. Vereza,
14 McDonough and cc Perez. See that there, the bottom
15 of the first page of D-7?

16 A. Yes.

17 Q. And you say, quote, "I have the record
18 on my desk waiting for a decision". See that there?

19 A. Yes.

20 Q. Now, the record, is that this patient's
21 record?

22 A. The patient medical record.

23 Q. And when you say -- what does "waiting
24 for a decision" mean?

25 A. Waiting for Maureen to put a team

1 A. No, I did not.

2 Q. Did you put anything in this letter to
3 indicate that you, for whatever reason, were not able
4 to handle the response?

5 A. No, I did not.

6 Q. Now, if you turn to the next page, this
7 is page two of D-7. I think this is the e-mail
8 you're referring to right in the middle of the page.
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11 and ccs the Chief Medical Officer. See that there?

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14 Oristela, this is a patient from WNY Internal
15 Medicine Department, is Yoly and Maria looking into
16 this?" See that there?

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18 Q. Who is Yoly?

19 A. Yoly, that's Yolanda Ayala, the
20 coordinator for the Internal Medicine Department.

21 Q. A clinical person?

22 A. Yes. She is a medical assistant.

23 Q. And Maria?

24 A. Maria Aguilera was responsible for that
25 Internal Medicine Department, and she is the nurse

1 practitioner.

2 Q. Okay. Do you have any problem with
3 Perez's response to your e-mail?

4 A. No.

5 Q. Okay. If we turn now the next e-mail,
6 by the way, as we go through these e-mails, if
7 there's some e-mail not in this chain or you remember
8 someone else contributing to this dialogue, let me
9 know.

10 I'm not -- if there are other e-mails
11 out there let me know. But to my understanding this
12 is -- the next e-mail appears to be same day,
13 April 19th, from you. And you send it to Dr. Vereza,
14 McDonough and cc Perez. See that there, the bottom
15 of the first page of D-7?

16 A. Yes.

17 Q. And you say, quote, "I have the record
18 on my desk waiting for a decision". See that there?

19 A. Yes.

20 Q. Now, the record, is that this patient's
21 record?

22 A. The patient medical record.

23 Q. And when you say -- what does "waiting
24 for a decision" mean?

25 A. Waiting for Maureen to put a team

1 together to work on this.

2 Q. That's what that means?

3 A. That that was what she was going to do
4 with it.

5 Q. How do you know that?

6 A. Because that was the way they used to
7 be. Sometimes if it was a case a situation, they
8 used to designate a team. Okay. You, you and you,
9 work on this.

10 Q. So that is what you meant by "waiting
11 for a decision"?

12 A. What they going to do with that.

13 Q. A decision. What decision?

14 A. As -- since Nishie said it's Maria
15 Aguilera and Yoly looking into that. So I have this.
16 How is it going to be done? Is Nishie going to do
17 something? What is going to be done?

18 Q. In this marked April 19th e-mail, did
19 you use any specific words to indicate the Horizon
20 letter had something to do with patient care?

21 A. No.

22 Q. Did you express that thought in any
23 other way in this April 19th e-mail that the Horizon
24 letter had something to do with patient care?

25 A. Not in the e-mail. But it could be

1 it before submission. Thanks." See that there?

2 A. Yes.

3 Q. Now, is there anything in that April
4 19th e-mail communication from McDonough to you where
5 she asks you to sign the response to Horizon?

6 A. No.

7 Q. Is there anything in that April 19th
8 e-mail from McDonough where she insists that you sign
9 the report?

10 A. No.

11 Q. Now, when she asks you, "please
12 investigate this and prepare a response" had you ever
13 in your time at North Hudson been requested to do
14 something like that?

15 A. No.

16 Q. Okay. So when we look back, please, at
17 the April 16th e-mail from you on D-7, last page on
18 D-7 where you describe the issue in the Horizon
19 report as, quote, "labs and record were lost" end
20 quote, see that there?

21 A. Yes.

22 Q. So are you -- is it your testimony that
23 investigating and preparing a response on the issue
24 of lost labs and record being lost, that that's
25 beyond not something you should have done as Director

1 of Health Investigation Management?

2 A. I been did investigate that.

3 Q. So investigating it is something that
4 you --

5 A. I did ask my employee if the report were
6 lost that day that the patient was seen.

7 Q. So investigating the lost records, that,
8 in your view, is something within your job as
9 director of that department?

10 A. Yes.

11 Q. Is preparing a response, in your view,
12 something that's within your -- within the scope of
13 your job as Director of Health Investigation
14 Management?

15 A. Yes.

16 Q. Now, how many people do you have
17 reporting to you at this time?

18 A. That were reporting to me?

19 Q. Yes. Approximately.

20 A. West New York, it was about 15. But I
21 was responsible for the ten sites and the employees
22 that were at the ten sites.

23 Q. Fair to say over 50 employees?

24 A. They were together, around 70.

25 Q. But you have the President Chris

1 Q. Okay. Now, had you ever been asked to
2 prepare a report for someone else's signature?

3 A. No.

4 Q. Had you ever asked one of the people
5 that report to you to prepare something that you
6 would eventually sign?

7 A. No.

8 Q. Okay. Now, in response to this e-mail
9 from Maureen on April 19th, the morning of April 20th
10 you respond, and I will quote, "Maureen, I don't know
11 how to do that. Can someone work with me?" End
12 quote. See that there?

13 A. Yes.

14 Q. What didn't you know how -- what didn't
15 you know to do?

16 A. The clinical part of it. The
17 qualitative review of the medical record, which they
18 did.

19 Q. But where -- what's your understanding
20 of what kind of qualitative -- what needed a
21 qualitative review?

22 A. Review the -- that's what they were
23 doing. Reviewing the medical record on a quality
24 basis of the documentation, to see if the issue of
25 not having the lab reports there that day impacted on

1 the patient care.

2 Q. Now, let's look at your April 20th
3 e-mail. Is there -- did you use any words there to
4 indicate that you lacked the clinical training or
5 background to do what she was asking you to do?

6 A. No.

7 Q. And in this April 20th e-mail, did you
8 use any words there to indicate that the complaint
9 from Horizon involves patient care?

10 A. No.

11 Q. Did you use any words in this April 20th
12 e-mail to indicate a clinical assessment is required?

13 A. No.

14 Q. Okay. Now, in these e-mails, this back
15 and forth that we have seen, let me summarize. You
16 get the report from -- I'm sorry, the Horizon letter
17 from somebody that works for you. You then send an
18 e-mail to Perez and McDonough. And we see the
19 e-mails we just went through on D-7, do you, Ms.
20 Love, have a recollection of there being any other
21 e-mails relating to this issue of the Horizon letter?

22 A. I don't recall.

23 Q. Okay. Now, do you recall there ever
24 being a discussion about the Horizon letter?

25 A. Now that you mention this, I remember

1 addressed.

2 Q. Did you ever encounter, come across any
3 facts in connection with this investigation that
4 supported that?

5 A. No.

6 Q. Now --

7 A. I had no way to evaluate that.

8 Q. Now, you gave these facts that are set
9 forth in D-8, you gave this to Maureen, right?

10 A. This, yes.

11 Q. We saw in D-7 how she asked you to
12 prepare a response, yes?

13 A. Yes.

14 Q. Did you, as Director of Health
15 Information Management, did you, from time to time,
16 draft letters?

17 A. Yes.

18 Q. Did you understand when Maureen said for
19 you to prepare a response, that you she wanted you to
20 draft a letter?

21 A. Yes.

22 Q. Did you ever attempt to do a draft of
23 the letter of the response?

24 A. I did this.

25 Q. You did. D-8 is what you did to

1 contribute to the response to the Horizon letter. Is
2 that fair?

3 A. Yes.

4 Q. Okay. Did you use any specific words in
5 D-8 to indicate this has anything to do with patient
6 care?

7 A. No.

8 Q. Who is -- forget that. And D-8, that is
9 the only notes you have of your investigative efforts
10 after the Horizon letter; is that right?

11 A. Yes.

12 (Whereupon D-9, Letter of 4/20/10, was
13 received and marked for identification.)

14 Q. D-9. I'm showing you D-9. Have you
15 seen D-9 before?

16 A. Yes.

17 Q. And is D-9 the letter from North Hudson
18 to Horizon?

19 A. Yes.

20 Q. And this letter is signed by McDonough?

21 A. Yes.

22 Q. Okay. Now, have you ever seen -- did
23 you get a copy of this?

24 A. No.

25 Q. When did you -- do you have a

1 order to make those statements.

2 Q. First part says, "The patient was seen
3 subsequently on 4/7/2010". Do you agree that a
4 nonclinical person could clearly make the statement
5 that the patient was seen on April 7, 2010? You
6 don't have to be clinical to say that, right?

7 A. That the patient was seen, no. The 4/7?

8 Q. Reporting that the patient was seen on
9 April 7th?

10 A. Yes.

11 Q. A nonclinical person can make that
12 observation?

13 A. That the person was seen on April 7th,
14 yes.

15 Q. Says, "The labs were reviewed with the
16 patient at the time". Could a nonclinical person
17 make that statement?

18 A. No.

19 Q. Why not?

20 A. Because reviewing the laboratory report
21 with the patient is a clinical review of the lab
22 reports. It's still going over the labs and say
23 okay, your this is this, and your cholesterol is
24 this, this, this. Those are clinical things.

25 Q. And I can really see someone is looking

1 MR. HEALEY: Really not. She throws in
2 numbers and I'm not seeing any of that here.

3 MS. FONER: Examples of that. But that
4 was -- that's her answer. If you have a different
5 question maybe --

6 MR. HEALEY: No. I want to go back over
7 this.

8 Q. When you point out that if someone is
9 reviewing lab reports -- lab results and there is
10 numbers involved going over cholesterol results,
11 clearly clinical, right?

12 A. Yes.

13 Q. Now, is this your testimony then? I
14 know I have asked you this a couple times now. If
15 someone making no reference to the lab results,
16 particular lab results, but they're reporting that,
17 the fact that the lab results were reviewed, just
18 that, you say that that is also clinical?

19 A. That's clinical statement.

20 Q. Okay. And what do you base that on?

21 A. Because in order to make that statement,
22 the medical record of that patient was the quality of
23 care that was provided to that patient, they were
24 reviewed by a clinical person.

25 Q. How do you know that?

1 A. Because it was reviewed by Maria
2 Aguilera who is a clinical person. Yolanda and
3 Nishie Perez when she was working on the report, was
4 also looking at the clinical information.

5 Q. And do you have the training or the
6 experience to look at a medical record and determine
7 when a lab report was reviewed?

8 A. No.

9 Q. You can't figure that out?

10 A. No.

11 Q. You can look at when a patient was seen,
12 that's something you can do?

13 A. The visit day is there.

14 Q. But you can't determine when the date a
15 lab report was read?

16 A. No.

17 Q. Okay. Is there anything else in D-9
18 that you would put into the category of clinical?

19 A. No.

20 Q. Now, was the -- when you, knowing what
21 you learned about the Horizon -- the patient who
22 complained to Horizon, is it your understanding that
23 he had a legitimate, a real complaint or just a
24 misunderstanding?

25 A. He was a complain.

1 Q. Do you see anything relating to the
2 patient's medical history?

3 A. No.

4 Q. See anything relating to whatever
5 medical issue he brought to North Hudson's attention?

6 A. They're not in there, but they were
7 reviewed.

8 Q. It's not in D-9?

9 A. It's not in part of this, but they were
10 reviewing to do this.

11 Q. Okay. Now, when it came to -- when you
12 indicated in D-7 to Maureen that you don't know how
13 to do this, remember that e-mail?

14 A. Yes.

15 Q. Did you ever get a response from her to
16 that?

17 A. I'm not sure.

18 Q. Now, and I just want to be clear. I
19 don't mean just a response by e-mail. Did she ever
20 call you and say something to the effect of,
21 "Oristela, what are you talking about here?"

22 A. No.

23 Q. Nothing like that?

24 A. No.

25 Q. You started saying before the break that

1 after the meeting, they continue reviewing the record
2 and working on it. After the meeting. But it was
3 not refer to anything as far as Horizon. Nothing
4 like that.

5 Q. When McDonough told you to let her know
6 if you needed any resources to respond, do you have
7 any idea what she meant by that?

8 A. No. What I reply, actually, I reply
9 well, we all going to be at that meeting. Do you
10 want me to bring that record to that meeting? I
11 understood somebody was going to work with me.

12 Q. Wasn't Maria and that other Yoly already
13 working with you?

14 A. No. I was the one that mention it to
15 Maria. They were not designated by -- they were not
16 designated by Maureen. In fact, when Maureen saw
17 Maria Aguilera working on it, she look at Maria
18 Aguilera like, what are you doing that? Maria
19 Aguilera got kind of, I would say, probably
20 intimidated and just sent everything to me. Like,
21 you know.

22 Q. Pushed it back to you?

23 A. Yes. Because the way that Maureen look
24 at her, like, what are you doing this? This it just
25 one of those things.

1 Q. Were you there?

2 A. Yes, I was there.

3 Q. And did you say anything in response to
4 that?

5 A. When that happened, Maria just gave me
6 everything. I say, "I can't put this together. I
7 don't have the clinical knowledge to do this."

8 Q. That's what you said. Who else was
9 present at that time?

10 A. It was Yoly, Maria, Nishie was kind of
11 standing over there. Nishie Perez.

12 Q. Tell me exactly what you said to
13 McDonough.

14 A. I told her that the report was based on
15 clinical information and I had no knowledge of that.
16 I don't have -- I didn't have the clinical background
17 to do it.

18 Q. Did anyone who attended that meeting
19 tell you that they heard you say that?

20 A. No.

21 Q. Have you talked to anybody to see what
22 they remember what you said at that meeting?

23 A. No.

24 Q. Was it right after that meeting that
25 McDonough gave you a warning?

1 A. Yes.

2 Q. Did McDonough, her version I think you
3 know, was that you, just without explanation, said
4 no, you're not doing it. Right?

5 MS. FONER: What is the question?

6 Q. Do you understand that McDonough, that
7 she disciplined you right after that meeting?

8 A. Yes, she did.

9 Q. And in that discipline did she say to
10 you in that meeting that you were insubordinate
11 because you just said no, you're not doing it?

12 A. Actually, what Maureen told me at that
13 meeting was, "You do it and sign it because we all do
14 and sign things here. Because if we going to go
15 down, we all are going to go down."

16 Q. Who was present when she said this?

17 A. Maria was sitting there, Yolanda was
18 sitting there. And I can say they were there.

19 Q. And has any of them ever confirmed to
20 you they heard what you just said?

21 A. No.

22 Q. So after that conversation with Maureen
23 and others were there, you then go back to her
24 office. Is that where she gave you the warning?

25 A. Actually, after that, what happened the

1 next date was Michael Shabbab went to see me in West
2 New York.

3 Q. Wasn't that after? Did he see you after
4 you was disciplined?

5 A. No. Michael Shabbab spoke with me
6 before the warning.

7 Q. I will get to that in a minute. So it's
8 the EMR meeting. It's after the EMR meeting is when
9 you have this and there's others in the room, but you
10 have this conversation with McDonough where you tell
11 her why you can't do the response to the Horizon?

12 A. Yes.

13 Q. And she says she wants you to sign it?

14 A. Yes.

15 Q. Did you have a further response to that?

16 A. I told her that it was not -- that I
17 wasn't going to sign it because that was based on
18 clinical information.

19 Q. After that meeting, do you recall what
20 she said in response to that?

21 A. What?

22 Q. When you told her why you're not going
23 to sign it, you said because it required clinical
24 information. Do you recall what, if anything, she
25 said at that point?

1 A. What I just -- what I just said, she
2 said to me, "You do it and sign it because we all do
3 and sign things here".

4 Q. Didn't you leave that meeting with she
5 was going to do it herself? Who ended up doing it?

6 A. Well, after I said that -- after she
7 said that we all, you know, we're going to go down,
8 we go down. She grab the record and she grab the
9 notes and then she went to her office and start
10 working with doing this with Chicky Torez --

11 Q. Chicky?

12 A. She was typing it and Nishie the QA
13 person was also there. At one point I saw Chicky and
14 Nishie working together. Nishie had the record with
15 her.

16 Q. And is this accurate, you never saw --
17 you told her you never saw the response to Horizon
18 until after the litigation started, right? Whatever
19 they worked on the letter, they worked on, you never
20 saw it?

21 A. I saw it right there.

22 Q. You did?

23 A. Yes, I saw it because as a medical
24 record person I want to be sure the information with
25 regard to the record was not lost, was part of it. I

1 A. Yes.

2 Q. Is it the next day that you have the
3 conversation with Michael?

4 A. The next day.

5 Q. He is the Chief Operating Officer?

6 A. Yes.

7 Q. Before we get to that day, is there
8 anything else on April 20th in connection with the
9 response to the Horizon letter, any conversations you
10 had with Maureen or anyone else that you haven't told
11 us about already?

12 A. No.

13 Q. Okay. Now, the next day you have a
14 conversation with Michael?

15 A. Yes.

16 Q. Tell me about that. Let's start off,
17 where was it?

18 A. Okay. I was in my office in West New
19 York and his administrative assistant call me that
20 Michael was -- Michael wanted to speak to me. I went
21 to the second floor in an office that was there
22 assigned for senior management. When you go to West
23 New York, they used to have that office there for
24 them to work. He was there. And I sat there and we
25 met there actually, and he told me that he was there

1 to find out what happened during that meeting in the
2 EMR and I explain to him everything that happened.

3 Q. It's really what happened after the EMR
4 meeting?

5 A. Yes. I went over everything. This is
6 what happened. I explain everything. Michael
7 actually had a computer. It was a computer on the
8 desk. Michael had all the e-mails that were sent to
9 me, to Maureen, Nishie. All the e-mails back and
10 forth. He look at the e-mails.

11 Q. The ones we went through?

12 A. Yes.

13 Q. D-7?

14 A. Yes.

15 Q. Okay.

16 A. And then he said to me, Oh, I can see
17 you did not back off. You did your part and I can
18 also see that you said that if someone could work
19 with you, that you ask for help. And then I ask
20 Michael, why didn't Maureen assign a team to work on
21 this?

22 Q. Didn't she?

23 A. Why didn't she? So Michael said to me,
24 that I want you to know I told Maureen she was
25 supposed to do say, you, you, you and you, work on

1 that. And I want you to know for future reference
2 that that is what she is going to be doing.

3 Q. So Michael indicated to you by saying
4 you, you and you. Is this fair, he was communicating
5 to McDonough that she should have assigned other
6 people to respond to Horizon?

7 A. Yes. Whoever were the team. Someone.

8 Q. And he said to you next time that's what
9 would happen?

10 A. He said to me, I want you to know the
11 next time, that this is what's going to happen. Then
12 I ask Michael another question. I said to Michael,
13 "Well, if I received a letter like this in the
14 future, what do you want me to do?"

15 Q. Horizon letter?

16 A. Horizon letter. And Michael said to me,
17 you send it to the QA person, who is Nishie Perez,
18 you send it to her, and you cc Maureen and cc that to
19 Maria.

20 Q. So he was giving you instruction as to
21 if there is another Horizon-like letter, get it to
22 Perez and cc McDonough?

23 A. And Dr. Vereas.

24 Q. Is there anything else you recall
25 Michael saying on April 21st, 2010?

1 words spoken?

2 A. No, she did not.

3 Q. Did you ever ask her?

4 A. No.

5 Q. What do you recall McDonough saying to
6 you on April 23rd surrounding this warning?

7 A. Well, before the warning we had a
8 meeting in the conference room.

9 Q. Who was in that meeting?

10 A. They called me and Nishie Perez to the
11 meeting.

12 Q. Who is "they"?

13 A. Michael and Maureen. Actually, the call
14 was from Michael. Michael wants us there at 4:00.

15 Q. It was Irizarry?

16 A. No. It was Michael Shabbab.

17 Q. Before you told us it was Irizarry. You
18 mean to say Michael?

19 A. No. It was Michael Shabbab, the
20 administrative assistant, Chicky Torez told me
21 Michael wants me and Nishie there at 4:00.

22 Q. So that's a different location?

23 A. That's in with the administrative
24 office.

25 Q. That's not West New York?

1 A. Not West New York.

2 Q. So you and Perez had to go drive to the
3 administrative office?

4 A. Yes.

5 Q. Where McDonough and Michael were?

6 A. Yes.

7 Q. Tell me what happened then.

8 A. That was awful.

9 Q. Tell me why it was awful.

10 A. Michael asked me the same question that
11 he asked me before when he went to see me at West New
12 York. Same questions. And Maureen started attacking
13 me. Very aggressive. Pointing at me with her
14 finger. Telling me, "I'm not going to tolerate
15 this". Nishie was -- my coworker was sitting right
16 next to me and I felt humiliated. I felt
17 embarrassed.

18 And she said, "I'm not going to tolerate
19 this. And I want you to know that there's some
20 positions going to be eliminated. One of the
21 positions they been looking at is the directors.
22 Directors position."

23 So she was threatening me with losing my
24 job. The thing got so ugly that Nishie that was
25 sitting there put her hands on her ears like that,

1 and said, "Please, this is too ugly. Stop. What do
2 you want me to do? Do you want me the next time that
3 we receive this for me to do it? I do it. But
4 please, let's stop this".

5 Q. That's what Perez said?

6 A. That's what she said.

7 Q. Let's go back with Michael Shabbab.

8 What do you recall him saying?

9 A. Michael ask me to please go over the
10 Horizon, you know, what happened. That he wanted to
11 know what was the, you know, what was the break down
12 through the process. And I told Michael I did
13 everything that I was supposed to do. And I did
14 this, this and this. And I went over everything that
15 I did.

16 Q. Did he disagree with you?

17 A. No.

18 Q. Did Perez, in that part of the meeting,
19 did Perez say anything?

20 A. I don't recall exactly what she said,
21 exactly. I don't recall what she said.

22 Q. Okay. And then?

23 A. But I recall that part when she said
24 this is ugly.

25 Q. Do you recall anything else that you

1 said to Michael?

2 A. No.

3 Q. At some point Maureen starts speaking?

4 A. She was speaking, yes.

5 Q. You said she was aggressive?

6 A. Yes.

7 Q. And she was intimidating?

8 A. Very aggressive. Intimidating. I was
9 scared. I was just like that. I was really scared.

10 Q. What words do you recall her using?

11 A. That Maureen was using?

12 Q. Did she use any profanity?

13 A. No.

14 Q. Did she was raising her voice?

15 A. She was raising her voice in a very
16 aggressive, intimidating way.

17 Q. Was she sitting or standing?

18 A. She was sitting and kind of trying to
19 stand, but she was...

20 MS. FONER: You need to verbalize for
21 the record. Can't shake your finger.

22 A. She was pointing at me. "And I want you
23 to know that I not going to tolerate this." Saying
24 that to me.

25 Q. Saying no to you or not --

1 A. For me to say. Not to her. And very,
2 very aggressive way.

3 Q. What else? What else do you recall her
4 saying?

5 A. That they -- it was a chance for me to
6 lose my job. You know, "I want you to know we are
7 looking into with implementation of medical record,
8 some position going to be looking at. The one we
9 going to be looking at are those ones that, you know,
10 the director.

11 At that point I thought that I was going
12 to lose my job.

13 Q. Well, before all this, with the -- with
14 how -- with the emergence of electronic medical
15 records, did you ever have any concern that because
16 of technology you could lose your job?

17 A. I was because they were not sending me
18 for training.

19 Q. Did you feel because they weren't
20 sending you for training your job was in jeopardy?

21 A. They were ignoring me.

22 Q. Say that again. Go ahead. But did you
23 feel that way before the Horizon letter?

24 A. No.

25 Q. So did you feel -- what else do you

1 recall Maureen saying to you?

2 A. I don't recall more.

3 Q. Now, in that meeting in front of Perez
4 and Shabbab, they were the only other ones there,
5 right?

6 A. Yes.

7 Q. In front of them did she say anything to
8 the effect she is going to discipline you?

9 A. No, she did not.

10 Q. Did the meeting end with her telling you
11 to meet her in her office?

12 A. No.

13 Q. Did you end up in her office?

14 A. I ends up in her office.

15 Q. How?

16 A. She call me at her office.

17 Q. After the meeting is over, you're still
18 in the administrative office. Before you left the
19 building did you go to her office?

20 A. Yes.

21 Q. It's just the two of you in that office?

22 A. It was just the two of us.

23 Q. Perez was outside?

24 A. She was in the outside, yes.

25 Q. Was the door closed?

1 A. No.

2 Q. Has anyone ever told you that they
3 overheard anything that was discussed in that meeting
4 in McDonough's office?

5 A. No.

6 Q. Now, that's the meeting where McDonough
7 tells you she is going to give you a warning?

8 A. Yes.

9 Q. And what tell me what you recall
10 McDonough saying to you in that meeting.

11 A. She said that she -- "I'm the director
12 and I not going to tolerate this. And I'm giving you
13 a warning".

14 Q. Was the warning already written?

15 A. It was.

16 Q. And did you -- we can see on D-10 your
17 comments. Did you put your comments -- did you write
18 your comments right then and there in her office?

19 A. No. I went to the conference room.

20 Q. Then you put your comments there?

21 A. Yes.

22 Q. Did you have enough time to put your
23 comments there?

24 A. Yes.

25 Q. Did you give it back to her?

1 one. It's not I not doing it. Just give me a team.
2 Give me someone that can work with me.

3 Q. Do one more exhibit then we will take a
4 break.

5 A. Okay.

6 Q. You already have D-11 in front of you.
7 Okay. I'm showing you D-11, which is actually also
8 Exhibit 2 to your complaint. But D-11 is an e-mail
9 from you to Chris Irizarry, April 26th. And has
10 attached to it four pages. Have you seen this e-mail
11 before?

12 A. Yes.

13 Q. If you go to the next -- the second page
14 of D-11. This is a one-page memo or letter from you
15 to Irizarry. He's the president, right?

16 A. Yes.

17 Q. Dated April 26th, 2010. Okay. So let's
18 just to get back into the sequence here. Friday
19 April 23rd is when you get disciplined and you leave
20 with a copy of the warning. This is now, you on
21 Monday sending this to the president in the morning?

22 A. He asked me to do it.

23 Q. Had you had a phone communication with
24 him after the?

25 A. I had.

1 Q. Let me -- after the discipline on April
2 23rd, did you reach out to him in any way?

3 A. Yes, I did.

4 Q. When did that occur?

5 A. Right after the warning.

6 Q. On the Friday?

7 A. On the Friday.

8 Q. And did he ask you to put down your side
9 of the story or your version of what happened?

10 A. He said to send him the report, that he
11 were going to address it on Monday.

12 Q. So you complained to him right away on
13 that Friday, and D-11 is you doing what he asked you
14 to do?

15 A. Yes.

16 Q. Is that right? Yes?

17 A. Yes.

18 Q. Is there anyone else you spoke to about
19 this issue after being disciplined by Maureen on
20 April 23rd?

21 A. No, I did not. However, Nishie was
22 aware because she was even with me when I was texting
23 Mr. Irizarry. Since I gave her a ride, she was --
24 she drove with me. So she knew in some way that the
25 warning was given to me because she was there.

1 don't think we have a copy of number seven. "I sent
2 an e-mail to Maureen asking her if I should bring the
3 record to the EMR meeting on April 20th in order to
4 finish the report." We marked the record but I
5 haven't seen that e-mail.

6 A. I did.

7 Q. Now, we have number eight. "After the
8 EMR meeting, I handed the record and initial
9 investigation I did to Maria Aguilera to complete the
10 report, since clinical information needed to be
11 discussed" -- okay. That's what you told us about
12 already, that you gave the patient's record and the
13 information you got from Yoly, you gave that to
14 Maria?

15 A. Yes.

16 Q. Seems at that point Maureen joined this
17 meeting. Looking at nine now.

18 A. Yes. She reviewed the record and
19 informed the group what she wanted in the report and
20 at the same time Maria handed her -- handed me her
21 notes and said, "Here, Oristela."

22 Q. This is what you described already how
23 Maria pushed it over to you?

24 A. Yes.

25 Q. Number ten. "At that point I felt that

1 top of the page you also see the reference to Maureen
2 insinuating that there could be eliminations around
3 here and you could lose your job?

4 A. Yes.

5 Q. And then about a quarter of the way down
6 you see reference to after leaving the conference
7 room she asked you to go to her office where you get
8 the warning and you go on to advise the president of
9 North Hudson that you didn't do anything wrong.

10 A. Yes.

11 Q. Now, okay. We're probably all anxious
12 for a break, but if you look at the second note dated
13 April 26th of D-11, is there anything in there that
14 describes these exchanges you had that you haven't
15 testified about already?

16 A. What? The paragraphs you said? No.

17 Q. I think we are beating it to death, but
18 you have told us about all these events, I believe?

19 A. Yes, I did.

20 Q. Now, the last page of D-11 is an -- is
21 your third and final note to the president of North
22 Hudson on April 26th, 2010. And this is where you
23 request a change in the reporting structure away from
24 McDonough?

25 A. Yes.

1 Q. And you suggest that it be towards --
2 I'm assuming it's Alex also, right?

3 A. Yes.

4 Q. Because that would coincide with the
5 movement towards electronic health records?

6 A. Yes.

7 Q. Did you ever get a response from him to
8 this?

9 A. No.

10 Q. What about the letter, the one before
11 this?

12 A. No.

13 Q. So none of these April 26th, 2010
14 letters did the president ever respond to you?

15 A. No.

16 Q. Did anyone ever respond to you on his
17 behalf?

18 A. No.

19 Q. Now, this third letter, you were
20 requesting a transfer. As we saw, this is not the
21 first time you requested a transfer away from
22 McDonough?

23 A. No.

24 Q. You did this before the Horizon letter?

25 A. I did that.

1 asked for but didn't receive from North Hudson?

2 A. I remember sending to Maureen an e-mail
3 that I wanted to participate in a webinar that I
4 believe was about electronic record, if I'm not
5 mistaken. That's what I think it was. And I
6 actually didn't receive any response.

7 Q. Do you know when that was?

8 A. I don't recall dates.

9 Q. Was it an e-mail that you sent her?

10 A. I sent her an e-mail and I sent her the
11 flyer, like, that she can review what it was.

12 Q. Do you have a copy of that anywhere?

13 A. I'm not sure, but I can look into it.

14 MR. HEALEY: Just mark that, please.

15 Q. This e-mail, D-12, this is August 2010.
16 And you can see at the bottom here starts where you
17 are writing to Maureen saying, "I would like to know
18 when I will be sent to the training". See that
19 there?

20 A. Yes.

21 Q. And then she responds the same day
22 saying, "Alex has sent Sarah and Robert". That's
23 what you told us about before. "We hope to do a
24 train the trainer in house that will be more cost
25 effective"?

1 A. Yes.

2 Q. Did you -- what did you think was really
3 going on here? Do you think you were being -- that
4 Maureen was retaliating against you in any way by not
5 sending you to this training?

6 A. Yes.

7 Q. What do you base that on?

8 A. Because I felt like what -- when we have
9 EMR meetings, I felt like I didn't feel like part of
10 the process of this. And also I remember getting a
11 call from Mr. Irizarry one day saying, "Oristela, I
12 want you to go to the EMR meeting and I instructed
13 Maureen already to send you. If she doesn't include
14 you in the training, you let me know".

15 Q. Let me just stop you so I understand.
16 At some point the president, Mr. Irizarry said to you
17 to let him know if you're not being included in the
18 training?

19 A. In the meeting, yes. In the training.

20 Q. Approximately, when was that?

21 A. That was, I don't know date, but I know
22 that was during the time that we were in the process
23 of getting electronic. Becoming electronic.

24 Q. Did you know approximately when that
25 process started?

1 A. I left -- we probably started working on
2 that in 2009, but I'm not sure exact dates.

3 Q. Was it early on in that process where
4 you felt you were not a part of the process?

5 A. If -- yes. If I am the Director of
6 Medical Records who implemented the medical records
7 system which is on paper, and now it's going to be
8 electronic, from day one, I believe, they were
9 supposed to be involved. Because it's kind of the
10 same thing. But now it's going to be electronic, so
11 I needed to know everything to be it electronic.

12 Q. So early on when they were first giving
13 thoughts to transitioning to electronic medical
14 records, do you feel you were being excluded from the
15 process?

16 A. Yes, I felt that.

17 Q. Early on was it that you were not being
18 included in things relating to EMR?

19 A. I was not included in the plannings and
20 process.

21 Q. In the what?

22 A. Plannings and process. I was not part
23 of a lot of activities that were part of the process
24 of becoming electronic. And, like, such as
25 developing work flows and developing templates for

1 the gathering information, and all of that. And then
2 the date that they were ready to go live, I said, you
3 know, it was so many issues because all of that was
4 not done. And I was not part of it. I said, we got
5 to deal with all of this. But I was not included.

6 Q. That started in 2009?

7 A. I think. I don't remember exactly when
8 they started electronic system. I cannot give you a
9 date because I don't have the exact date.

10 Q. Did you ever complain to anyone that you
11 were not being included?

12 A. I spoke with Mr. Irizarry and he said,
13 "Maureen, I want to send her to the training and I
14 told her she has to send you".

15 Q. Did you ever do that?

16 A. As far as...

17 Q. Did you ever go to him to say, "She is
18 excluding me, Mr. Irizarry, I need help. Get me
19 included"?

20 A. I sent this e-mail.

21 Q. He received this e-mail. I'm sorry.
22 Right at the top this is you sending it to him?

23 A. Yes.

24 Q. Did you ever receive any response from
25 him?

1 A. I believe that he answer. Maureen was
2 the one that answered and cc him. So she was making
3 him aware of all of this. He is aware because she cc
4 him.

5 Q. Did you end up attending this training
6 session?

7 A. No, I didn't.

8 Q. Did you end up receiving the training,
9 the trainer session in-house?

10 A. No.

11 Q. Did you follow up to try to get in-house
12 training?

13 A. No.

14 Q. Now, after you're disciplined by Maureen
15 in May 23rd, 2010 -- I'm sorry April 23rd, 2010.
16 This is -- this training issue is about five months
17 later in August, right? I'm all messed up.

18 You got -- the training happened, I'm
19 sorry. The discipline happened April 23rdd. This
20 training that you didn't get was in August. So that
21 was about four months later.

22 Was there any way in which, let's take,
23 you know, May, June, July, do you have any
24 recollection of May, June, July 2010 where you were
25 treated differently in any way at North Hudson?

1 Someone in your department is causing
2 you a problem, and had Maureen ever not supported
3 what you wanted to do to deal with that employee who
4 is creating the problem?

5 A. No, I don't recall any instance like
6 that.

7 Q. So when you look back, is Nelly the
8 first time that Maureen didn't support you in the
9 steps you wanted to take to deal with a problem
10 employee?

11 A. I can't say that Nelly was the first one
12 because I don't recall if there were any other
13 instances before.

14 Q. Had you ever, in all your time there,
15 had you ever terminated an employee before?

16 A. Yes, I did.

17 Q. Do you know approximately how many?

18 A. I actually don't recall how many.

19 Q. Were there more than ten?

20 A. I don't think so.

21 Q. More than five?

22 A. I don't recall how many.

23 Q. Okay. Have you suspended employees
24 before?

25 A. Yes.

1 Q. Would you say -- okay. And you have
2 disciplined employees?

3 A. Yes.

4 Q. And is it fair to say you don't have
5 authority on your own to hire or fire?

6 A. Just to recommend.

7 Q. Okay. When it comes to suspend, do you
8 have the authority on your own to suspend?

9 A. No.

10 Q. So would you have to get Maureen, your
11 immediate supervisor to approve the suspension of
12 hiring or firing?

13 A. Yes.

14 Q. Those prior times where you suspended or
15 fired while Maureen was your boss, she had to have
16 said yes to that?

17 A. I can't say yes, I can't say no.
18 Because I don't know the policies. At one point the
19 policies in that sense change at one point and I
20 don't recall. We're talking about six years ago. I
21 don't recall.

22 Q. Were there some times where Human
23 Resources would be the one who would -- who would
24 approve that decision you wanted to make as to an
25 employee?

1 two days without pay?

2 A. Yes.

3 Q. You signed off on that on the second
4 page of D-15?

5 A. Yes.

6 Q. This is the suspension that you asked
7 for and Maureen approved?

8 A. Yes.

9 Q. So I just want to ask you then, how --
10 you first asked Maureen if you could suspend Nelly on
11 September 2nd. She told you on September 3rd, the
12 next day that you could. We've seen that, right?

13 A. Yes. To work with HR.

14 Q. So how is it then you told us before, I
15 believe, that Maureen was not doing things to make it
16 difficult for you to deal with a very poor employee.

17 In this instance, how did she do that if
18 the very next day she told you approved, exactly the
19 action you wanted to take?

20 A. In that instance she did it, but after
21 that, that was at the beginning of the whole
22 situation. That was 9/9. September 9th. Nelly was
23 terminated in November. So I went all the way from
24 this date to November dealing with the situation with
25 no support.

1 to be at all the sites.

2 Q. What is wrong with that?

3 A. To me she was, I felt like, you know,
4 she was intimidating me.

5 Q. But did she ever identify who that other
6 employee was?

7 A. No, she didn't. I asked her. She said
8 that's confidential.

9 Q. Did -- were you ever interviewed in
10 connection with either employee complaints?

11 A. No.

12 Q. Did you ever hear in connection with
13 Nelly's complaint that McDonough did not support you?
14 I will say it this way. Did you ever hear that
15 McDonough believed that there was some validity to
16 Nelly's complaint?

17 A. No.

18 Q. Did you ever hear that McDonough or did
19 you ever come to learn that McDonough believed that
20 Nelly's complaint was not valid?

21 A. She never spoke to me about the
22 complaint.

23 Q. But did you ever hear from someone else
24 that McDonough felt that Nelly -- that her complaint
25 had no merit?

1 A. No.

2 Q. Did you, in connection with either
3 Nelly's complaint or the complaint of the other
4 employee, I know you don't know who it was, did you
5 ever receive any form of discipline?

6 A. No.

7 Q. Was -- do you know whether or not an
8 investigation was conducted when employees were
9 spoken to in all the other sites?

10 A. No. Just at the West New York site.

11 Q. So is it your understanding what Kimble
12 said to you over the phone did not end up happening?
13 There wasn't this very broad investigation?

14 A. I'm not sure about that. I know that
15 they called certain employees from the West New York
16 site.

17 Q. Did you have any concern in connection
18 with either one of these employee complaints that
19 this could put your job at risk?

20 A. I was not aware of the complaints.

21 Q. Well, did McDonough ever speak to you
22 about either one of them?

23 A. No, she didn't.

24 Q. What about Michael or Chris?

25 A. No, they didn't.

1 Q. And the complaint from Nelly, is it true
2 you never saw that complaint until the litigation
3 started?

4 A. Yes, I didn't see it.

5 Q. No one ever shared that with you during
6 your employment?

7 A. No.

8 Q. Did you ever ask to see both complaints?

9 A. Yes.

10 Q. You asked Kimble?

11 A. Yes.

12 Q. She told you no, it was confidential?

13 A. Confidential.

14 Q. Did you ever ask anyone else?

15 A. No.

16 Q. Now, in connection with either one of
17 these complaints, was there anything that McDonough
18 said or did or didn't do that made you think that she
19 was not supporting you?

20 A. Yes.

21 Q. How? What makes you believe that
22 McDonough did not support you in connection with an
23 employee complaint in 2010?

24 A. Because she was aware. I kept informing
25 her what was going on. I ask her for overtime. In

1 order for me to get approval for overtime, I had to
2 follow up with her couple days later, and she was
3 aware of the seriousness of the situation and did not
4 address it.

5 MS. FONER: Which complaints? Seems
6 like maybe the client is -- Ms. Love is talking about
7 Nelly's complaint and I think you're referring to
8 performance issues.

9 Q. Let me try to clarify. I'm talking
10 about -- I'm not talking about your issue with Nelly.
11 Okay. All I have talked about so far is you wanted
12 Nelly suspended in early September, and McDonough
13 approved that, right? You told us about that.
14 Remember that?

15 A. Yes.

16 Q. I'm talking about in connection with the
17 employee complaints. I know you never saw them, did
18 you ever -- do you have any reason to believe that in
19 connection with those employee complaints that
20 McDonough didn't support you?

21 A. Do you mean that she had the complaints
22 and -- well, what I believe she did not support me
23 because she did not speak to me about it.

24 Q. Is there any other way you believe
25 McDonough didn't support you with respect to those

1 employee complaints in 2010?

2 A. What I just said. She did not address
3 it with me. Oristela, I got complaints from this
4 employee, this employee. Let's discuss it. And
5 let's see what happened.

6 Q. So McDonough not telling you about it
7 and meeting with you about it, you view that as
8 McDonough not supporting you?

9 A. Yes.

10 Q. Is there any other way in which anything
11 McDonough said or did that leads you to the
12 conclusion that she did not support you with respect
13 to those employee complaints in 2010?

14 A. I'm not clear about that question.

15 Q. Okay. You told us that you have these
16 employee complaints in 2010. One, you know is from
17 Nelly, and the other one you don't know who it is,
18 right?

19 A. Yes.

20 Q. You told us that McDonough did not speak
21 to you about it, nor did she meet with you about it,
22 right?

23 A. Yes.

24 Q. And you view that as McDonough not being
25 supportive of you?

1 A. Yes.

2 Q. My question is, is there any other way
3 in which -- anything else she said or did that leads
4 you to conclude that McDonough did not support you in
5 connection with those two employee complaints or is
6 that it?

7 A. I think I answered that other previous
8 question.

9 Q. So do you have anything to add?

10 A. No.

11 Q. Or is that it? Okay. All right. Do
12 you feel that those employee complaints had anything
13 to do with the termination of your employment?

14 A. I'm not sure about that.

15 Q. Do you feel that the discussion you had
16 in September 2009 about your job description, that
17 that had anything to do with the termination of your
18 employment?

19 A. I have no information of why the reason
20 of my termination, actually. Because when I ask
21 Michael, you know, "What's the reason for the
22 termination?" Michael said, "It's because of recent
23 incidents".

24 Q. He just said the recent incident?

25 A. He just said the recent incident. I

1 think the termination in general. It was one way of
2 retaliating.

3 Q. Okay. But -- we'll get into this in a
4 bit. But you asked for but didn't get any more
5 detail other than you're being terminated due to
6 recent incidents. Is that accurate?

7 A. Yes.

8 Q. And that was from Michael the COO?

9 A. Michael the COO.

10 Q. Okay.

11 MR. HEALEY: Mark this.

12 (Whereupon D-16, E-mail, was received
13 and marked for identification.)

14 Q. Okay. I'm showing you document marked
15 for identification as D-16. Just for the record,
16 this is also Exhibit 3 to the complaint.

17 First page is an e-mail from you to
18 McDonough and Kimble, and this is regarding Nelly
19 dated October 5, 2012. Attached to this is a memo or
20 letter dated October 5, 2010, from you. It's not
21 directed to you. See that there?

22 A. Yes.

23 Q. In general it seems to have been your
24 practice like we saw, remember, the April 26th notes
25 you wrote to Chris, you did a cover e-mail and have

1 A. No.

2 Q. Was it your expectation she would get
3 back to you when she had this in writing?

4 A. Yes.

5 Q. So on the phone that morning you
6 essentially gave her all that you -- what you wrote
7 down here, you gave her these facts?

8 A. Yes. I went over, yes, the issues that
9 I was having with Nelly.

10 Q. Okay. This e-mail is dated, time is
11 2:13 p.m. so the memo is you doing what Maureen asked
12 you to as you now documented what you told her
13 orally?

14 A. Yes.

15 Q. Do you recall getting an e-mail response
16 from Maureen to this D-16?

17 A. I don't recall.

18 Q. Do you recall getting a phone call?

19 A. I don't recall.

20 Q. Do you recall following up with her to
21 find out what her decision was?

22 A. I don't recall.

23 Q. Do you recall going over her head to
24 Chris or Bob to let them know that I need a decision
25 as to Nelly?

1 to McDonough?

2 A. I don't recall that.

3 Q. Did you see any reference in the
4 October 5th note to Maureen, do you see any reference
5 in there to the fact that Nelly has complained about
6 you?

7 A. No.

8 Q. When you learn that Nelly had complained
9 about you, were you nervous about having just
10 recommended that she be terminated?

11 A. I was not.

12 Q. Did you do anything to retract, to take
13 back this request you made for Maureen's approval to
14 terminate Nelly?

15 A. No.

16 Q. At that point, even after you learned of
17 Nelly's complaint, you were still determined to get
18 her terminated?

19 A. She wasn't doing her job. Yes.

20 Q. Okay.

21 (Whereupon D-17, E-mail, was received
22 and marked for identification.)

23 Q. I show you a document marked for
24 identification as D-17. This by the way, is
25 Exhibit 5 to your complaint. It is an e-mail from

1 you to Maureen dated October 18th, 2010. And you
2 made reference to this before. This is you
3 requesting overtime because of it was necessary
4 because of Nelly's poor productivity. Right?

5 A. Yes.

6 Q. And overtime is something you would have
7 to get McDonough to approve?

8 A. Yes.

9 Q. And she didn't get back to you on this?

10 A. I don't believe she, you know, she got
11 back to me.

12 Q. At this point, on October 18th, had she
13 gotten back to you on the request to terminate her?

14 A. In October 18th to terminate her?

15 Q. Yes.

16 A. No.

17 Q. Do you make any reference here following
18 up with McDonough -- let me back up. On this
19 October 18th e-mail, D-17, you're asking her for
20 approval for overtime, right?

21 A. Yes.

22 Q. Do you make any reference in here
23 following up to your October 5th request to terminate
24 Nelly?

25 A. No, I did not.

1 Q. Okay.

2 (Whereupon D-18, E-mail, was received
3 and marked for identification.)

4 Q. Showing you D-18 for identification.
5 This is Exhibit 6 to your complaint. This is an
6 October 21st e-mail from you to McDonough. And in
7 this e-mail you cc the president. I'm sorry. CEO
8 Shabbab, Dr. Vereas and Kimble. See that?

9 A. Yes.

10 Q. And you indicate here that you're very
11 concerned about her performance situation is causing
12 a strain and you're requesting overtime for two
13 employees?

14 A. Yes.

15 Q. Is that fair?

16 A. Yes.

17 Q. Is it fair to assume you wrote this
18 October 21st letter because you did not receive a
19 response to your prior request from McDonough for
20 overtime?

21 A. Yes.

22 Q. Now, you're letting other people know of
23 the problem it's creating in your department. That's
24 why you cc'd the other people?

25 A. Yes.

1 Q. Is there any reference to D-18 to your
2 request of October 5th to terminate Nelly?

3 A. No.

4 Q. Now, did you eventually get the approval
5 for the overtime?

6 A. I believe, yes, that Maureen call me on
7 the phone upset and said, pay the overtime.

8 Q. What do you mean she was upset?

9 A. In her voice, like, you know.

10 Q. Let me get a sense of something. You
11 two, you're not in the same office, right?

12 A. No, we're not.

13 Q. How often in a typical week do you see
14 her? Are you able to make generalizations or is it
15 tough?

16 A. When we had a meeting, we used to go to
17 the main office to meet with her. But not on a
18 regular basis.

19 Q. Could a week go by and you not see her?

20 A. No.

21 Q. So you would see her at least once every
22 week?

23 A. What do you mean? See her as far as
24 having -- have a meeting with her or just see her?

25 Q. I mean, did you -- were you in the same

1 A. Your question is in regard when she was
2 terminated?

3 Q. Yes. Because here if we go back to
4 here, D-16, is you to Maureen, you're cc'ing Kimble.
5 It's you on October 5th, you to McDonough and Kimble
6 and you're attaching this October 5th note where
7 you're requesting termination of Nelly?

8 A. Yes.

9 Q. You had done that in the morning
10 earlier, a phone call with her. Then she says, "Put
11 it in writing"?

12 A. Yes.

13 Q. In response to this, did McDonough tell
14 you, deal with HR?

15 A. Yes. That's what she did. Work with
16 HR.

17 Q. So where did you then work with HR to
18 get tell Nelly terminated?

19 A. There were e-mails in between me and
20 Barbara, things that happened with Barbara.
21 Sometimes were phone calls giving me instructions
22 over the phone, "I want you to do this. I want you
23 to do that." Barbara.

24 Q. I got a feeling we're going to see
25 those. I think I have them here. But after what we

1 letter to McDonough to get Nelly terminated.

2 A. Yes.

3 Q. You then, on October 22nd, send that
4 letter and other E-mails to Chris, the president, to
5 bring him up to date on what you wanted done on
6 October 22nd with Nelly?

7 A. Yes.

8 Q. And what you wanted done with Nelly was
9 you wanted Nelly terminated?

10 A. Yes. That was part of it.

11 Q. So how is it then on October 22nd you
12 felt pressured by Kimble to discipline Nelly?

13 A. Because Kimble kept telling me, you
14 know, write her up. Give her another warning. Give
15 her another warning. And I was asking her, how many
16 warning are we going to give her?

17 Q. So you were you frustrated in that
18 Kimble was not saying, just go ahead and fire her?

19 A. I was frustrated that they were not
20 taking care of it. Huge problem that it was causing
21 in the department.

22 Q. So when Kimble was suggesting something
23 other than termination, you didn't want that. You
24 wanted her terminated?

25 A. Yes.

1 not terminate, but rather suspend?

2 A. Yes.

3 Q. At that point, is this accurate, you
4 were looking for -- at that point Kimble needed to
5 approve this; is that right?

6 A. Yes.

7 Q. You were not waiting on McDonough to
8 approve this?

9 A. I'm waiting for Maureen and Barbara to
10 work together, and Maureen even get back to me
11 because she was my supervisor, this is what we going
12 to do.

13 Q. And Maureen's involved all along by way
14 of being copied on e-mails?

15 A. She was.

16 Q. But what information do you have that
17 would reflect any involvement by Maureen in this
18 issue at that time other than a recipient of e-mails
19 along the way?

20 A. I don't have any other information. I
21 just know she was aware of everything.

22 Q. Okay. Let me show you D-22. This, by
23 the way, is Exhibit 8 of the complaint.

24 If you look on November 2nd, there is an
25 e-mail from Kimble, Barbara Blake to you, where she

1 says, "Hi. Please confirm/send a copy of Nelly's
2 previous suspension as soon as possible". You
3 respond soon after that on the same day, "Done.
4 Thania will forward to you. Thanks." See that
5 there?

6 A. Yes.

7 Q. When she says the "previous suspension"
8 is she referring, if you know, there to the
9 September 9th suspension?

10 A. I don't really recall.

11 Q. Is there anything in your response here,
12 on November 2nd, is there any indication there by you
13 to Kimble that you felt any kind of pressure from
14 her?

15 A. Not at that point.

16 Q. Okay. Now, at this point is it your
17 understanding that what's going to happen to Nelly is
18 merely to be suspended again instead of terminated?

19 A. Yes.

20 Q. And is there any communication from you
21 where you're expressing that you're upset with that?
22 Do you feel she should be terminated?

23 A. Yes.

24 Q. Where is that?

25 A. That was over the phone with Barbara. I

1 was actually going on vacation and I sent an e-mail
2 stating -- letting everybody know I was going on
3 vacation. When Barbara got the e-mail, she said,
4 before you leave, call me. I talk to her on the
5 phone. And then she was telling me, you know, you
6 want to take care of this before you leave. And, you
7 know, to suspend her. And I actually told her, do
8 you think this is a good idea since she's, you know,
9 continues suspending her since she has already filed
10 complaint against me? And she was kind of
11 pressuring, you know, follow my directions. And then
12 she brought up a lot of this stuff.

13 Q. But you, at this point were because of
14 her failure to improve her performance, you only saw
15 one solution and that was to end Nelly's employment?

16 A. I actually asked Barbara if she could
17 transfer Nelly to a different department because that
18 situation was impacting the morale of the department,
19 patient care. They would destroy the department. I
20 said, "Can you transfer her to a different
21 department?"

22 Q. What response did you get?

23 A. She said to me, "If I transfer Nelly, I
24 would have -- your department is going to be with no
25 employees because everybody have complain about you."

1 Q. She said "everybody"?

2 A. "Everybody".

3 Q. That's not true. Right?

4 A. That was not true. And I said, "That is
5 not true." And then she said, you have a
6 complaint -- a warning when George Leno was the HR
7 Director. And I said, "That is not true because
8 George Leno used to tell me I was the best manager.
9 That he never got any complaint through my department
10 during the time he was there."

11 Then she brought up the complaint -- the
12 warning. And I said to her, "Well, I sent an e-mail
13 to Mr. Irizarry requesting for that warning to be
14 retracted."

15 And then she said, "Did he respond to
16 you about that?" And I said, "No, he didn't." She
17 said, "I'm reviewing your file. I'm reviewing your
18 file. I have your file with me. I'm reviewing it
19 and I'm waiting for a letter from Maureen."

20 Q. What kind of letter?

21 A. I don't know what letter. But my
22 impression that day was that I was being set up. I
23 was going on vacation. I was going to Florida. I
24 cancelled my vacation because I was being threatened
25 by Barbara. I don't know what was going on.

1 Q. Did you ever have a conversation with
2 McDonough after you sent D-23?

3 A. No.

4 Q. Did -- was it a phone conversation with
5 Kimble?

6 A. Yes.

7 Q. Now, when you think about this now, are
8 you confident you sent this from home?

9 A. Yes.

10 Q. What is your home e-mail address?

11 A. Olove@optimum.net.

12 Q. That's the same account you had back
13 then?

14 A. Yes.

15 Q. Is it your practice to delete e-mails
16 that go back that far? E-mails that you sent, would
17 you still have them?

18 A. If I would, I have to check into it.

19 MR. HEALEY: Mark that, please.

20 Q. Now, this e-mail, this note here of
21 November 2, 2010, did you write this on your own or
22 did anyone help you with any part of D-23?

23 A. May I consult with my attorney?

24 MS. FONER: There is nothing, you know,
25 he's not asking for any communications with counsel.

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ORISTELA LOVE,

PLAINTIFF,

VS.

**NORTH HUDSON COMMUNITY
ACTION CORPORATION, CHRIS
IRIZARRY, JOHN DOES 1-10, AND XYZ
CORP. 1-10,**

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: L-1852-11

CIVIL ACTION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, I caused an original and one (1) copy of the Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment, Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Responding Statement of Disputed Material Facts Submitted Pursuant to R.4:45-2(b), Certification of Francine Foner, Esq., and this Certificate of Service to be served, via hand delivery, upon:

Clerk of the Superior Court
Hudson County, Superior Court of New Jersey
595 Newark Avenue
Jersey City, New Jersey 07306

The undersigned hereby certifies that on this date, I caused an original and one (1) copy of the Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment, Plaintiff's Response to Defendants' Statement of Undisputed Material Facts and Plaintiff's Responding Statement of Disputed Material Facts Submitted Pursuant to R.4:45-2(b), Certification of Francine Foner, Esq., and this Certificate of Service to be served, via electronic mail and regular mail, upon:

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DATED: April 9, 2013

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
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CIVIL ACTION

**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

In her complaint, Plaintiff, Oristela Love, ("Love" or "Plaintiff"), alleges violations of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. ("CEPA"), intentional infliction of emotional distress, and breach of contract claims.¹

In this case, Love alleges that Defendants, her former employer, North Hudson Community Action Corporation, ("North Hudson" or "NHCAC") and its President and CEO, Chris Irizarry ("Irizarry"), violated CEPA when they terminated her for refusing to participate in conduct that she reasonably believed was in violation of law and fraudulent, for complaining about her supervisor's illegal and fraudulent conduct, and for refusing to retract those complaints.

In April 2010, Love, in fulfillment of her role as Director of Health Information Management, conducted the initial investigation of a patient care complaint from a Horizon HMO member that "involved the MD and concerned MD office lost record and lost blood work." ("Horizon Complaint.") (WHH Cert., Ex. M)². Love obtained the medical record, reported that the medical record had always been available but that the lab results had not been available, and that the patient was next seen approximately two and one-half weeks later. In accordance with protocol, both the Director of Quality Assurance, Nishie Perez ("Perez"), and Love notified Love's supervisor, Maureen McDonough ("McDonough"), Director of Clinical Services, and Jorge Vereas, M.D., ("Vereas"), the Chief Medical Officer of the status of Love's investigation. Love and Perez informed McDonough and Vereas that Love had completed the

¹ Love has agreed to withdraw her claims for severe emotional distress and intentional infliction of emotional distress, as well as her contract claims.

² Plaintiff's citations to "WHH Cert." refer to the Certification of William H. Healey, Esq. submitted by Defendants in support of the within motion.

initial investigation and had the record on her desk while Love waited to be told to which clinical staff person she should forward the file, to complete the clinical portion of the investigation; this included reviewing the patient's medical history and lab results to determine if there was any health risk to the patient as a result of the 2½ week delay in having the labs available. However, rather than assign any clinical staff to complete the clinical review of the file, McDonough demanded that Love alone complete and sign the report. Love replied that she did not know how to do that, since she did not have a clinical background, and asked if someone could work with her. However, McDonough failed to assign anyone to work with Love, and instead insisted that Love complete and sign the report, stating "You do it and sign it because we all do and sign things here. Because if we [*sic*] going to go down, we all are going to go down."

Love refused to complete and sign off on a report into the investigation of a patient complaint from a Horizon HMO member that concerned quality of care issues and which required a clinical evaluation ("Horizon Report"). Since Love did not have a clinical background and was not qualified to evaluate clinical information, Love reasonably believed that for her to complete and sign off on the Horizon Report, which required a clinical assessment of the record, would be fraudulent and violate quality of care standards and regulations governing quality of care. After Love refused to complete and sign off on the Horizon Report, Love's supervisor issued Love a warning – the first and only discipline that Love received in her 16 years as an employee at North Hudson. Love then complained to the CEO about what she reasonably believed was fraudulent and illegal conduct by her supervisor, as well as her supervisor retaliating against her for refusing to participate in such conduct, but the CEO failed to respond, conducted no investigation and took no remedial action. Thereafter, the retaliation

continued. In November 2010, Love again complained about the fraudulent and unlawful conduct and the continuing retaliation she felt was designed to set her up for termination., Defendants pressured Love to withdraw her complaints of fraud and retaliation. When Love refused to do so, Defendants terminated her on November 19, 2010, admittedly, for refusing to withdraw her complaint of fraud and retaliation.

PROCEDURAL HISTORY

Love adopts the procedural history included in Defendants' Brief.

STATEMENT OF FACTS

Love respectfully refers to her response to Defendants' purported Statement of Undisputed Material Facts.

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW

The standard of review on a summary judgment motion is well settled. When deciding a motion for summary judgment under Rule 4:46-2, the Court should deny such a motion if, when viewing the competent evidential materials presented in the light most favorable to the non-moving party, there exists a genuine issue with respect to a material fact. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 524 (1995). Additionally, by its plain language, Court Rule 4:46-2 dictates that a court should deny a summary judgment motion where the party opposing the motion has come forward with evidence that creates a "genuine issue as to any material fact challenged." R. 4:46-2. The underlying Statement of Facts and Love's responses thereto, and

Responding Statement of Disputed Material Facts, adequately displays that most if not all material facts giving rise to Love's Complaint are contested.

Additionally, the Court, when deciding Defendants' Motion for Summary Judgment, should construe all facts and other evidence in the light most favorable to the parties opposing summary judgment. Dairy Stores, Inc. v. Sentinel Publishing Co., Inc., 104 N.J. 125, 135 (1986). This is so because a party opposing such a motion should not be denied a trial unless the moving party sustains the burden of showing clearly the absence of a genuine issue of material fact.

In determining the validity of this Motion for Summary Judgment, Love respectfully submits that the trial court must not decide issues of fact, but must merely decide whether there are any such issues that are material and controverted. Judson, supra, 17 N.J. at 73; Mercer v. Weyerhaeuser Co., 324 N.J. Super. 290, 317 (App. Div. 1999) (citing Brill, supra, 142 N.J. at 540) (The appellate standard to review granting of summary judgment motion is, "whether, viewing all of the competent evidential material presented to the trial judge in a light most favorable to the non-moving party, the evidence is so one-sided that a reasonable fact-finder must resolve the disputed issue of material fact in favor of the movant."); Antheunisse v. Tiffany & Co., Inc., 229 N.J. Super. 399, 402 (App. Div. 1988) (Same standard should be applied on appeal of such issues). Under such a standard, it is beyond clear that Defendants' Motion for Summary Judgment should be denied.

As is evident from Plaintiff's Response to Defendants' Statement of "Undisputed" Material Facts, as well as Plaintiff's own Responding Statement of Disputed Material Facts, there are numerous material facts in dispute which make this matter entirely inappropriate for summary judgment. Thus, based on this issue alone, the motion should be denied.

POINT II

PLAINTIFF CAN DEMONSTRATE A PRIMA FACIE CASE UNDER THE CONSCIENTIOUS EMPLOYEE PROTECTION ACT

The New Jersey Conscientious Protection Act (CEPA), N.J.S.A. 34:19-1 et seq., is “remedial social legislation designed to promote two complementary public purposes; ‘to protect and [thereby] encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employees from engaging in such conduct.’” D’Annunzio v. Prudential Ins. Co. of America, 192 N.J. 110 (N.J. 2007). As broad, remedial legislation, the statute must be construed liberally. Id. “The aim of the legislation is to encourage, not thwart, ‘legitimate employee complaints.’” Gerard v. Camden County Health Services Center, 348 N.J. Super. 516, 520 (App.Div. 2002), citing Estate of Roach v. TRW, Inc., 164 N.J. 598, 610 (2000).

The relevant sections of N.J.S.A. 34:19-3 provide:

An employer shall not take any retaliatory action against an employee because the employee does any of the following:

a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer ... that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law[;] ...

* * *

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to a rule...;

(2) is fraudulent or criminal; or

(3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.³

As set forth below, Love has submitted sufficient proof to satisfy these elements.

A. LOVE'S PROOFS SET OUT A PRIMA FACIE CASE UNDER CEPA AND ESTABLISH GENUINE ISSUES OF MATERIAL FACT THAT WARRANT DETERMINATION BY A FACTFINDER

Love has offered sufficient evidence to establish each element of her prima facie case of retaliation under CEPA, N.J.S.A. 34:19-3a, c(1), c(2) and c(3). Looking at the totality of the evidence in the light most favorable to Plaintiff, sufficient genuine issues of material fact exist, and in turn warrant putting the case before a factfinder for determination.

Specifically, Love has presented ample evidence establishing that:

1. she reasonably believed that her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy;
2. she performed a whistle-blowing activity described in N.J.S.A. 34:19-3a, c(1), c(2), or c(3);
3. an adverse employment action was taken against her; and
4. a causal connection exists between the whistle-blower's activity and the adverse employment action.

Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003).

i. Love Reasonably Believed That Her Employer's Conduct Violated Either a Law, Rule, or Regulation Promulgated Pursuant To Law, or Clear Mandate of Public Policy

In April 2010, NHCAC received a patient care complaint from a Horizon HMO member that "involved the MD and concerned MD office lost record and lost blood work." ("Horizon

³ Love does not contend that her CEPA claim is predicated upon testifying or giving information to a public body, and thus does not seek relief under N.J.S.A. 34:19-3b.

Complaint.”) (WHH Cert., Ex. M). Love, as Director of Health Information Management, completed her proper role in the investigation of the Horizon Complaint according to her job functions and qualifications by (1) making key personnel aware of the Horizon Complaint and Horizon’s request for a response (2) initiating the investigation by preparing the preliminary nonclinical portion of the report; (3) providing a copy of the medical record; and (4) proactively following up to ensure a timely response was provided. (WHH Cert., Exs. O and R). After Love completed the initial investigation, by finding that the record had not been lost, that the labs had not been available, and stating when the patient was next seen, Perez, the Quality Assurance Director, sent an email to Vereza, the Chief Medical Officer, and McDonough, to follow up with them on the next step in the investigation of having clinical staff from the department in which the patient was seen look into the clinical issues, to complete the investigation. (WHH Cert., Ex. N; Pl. Tr. 130:25-131:3). However, rather than assign any clinical staff to work on the clinical issues, in accordance with protocol, McDonough asked Love to complete the investigation; McDonough did this despite the fact that, as she acknowledged during her deposition, completing the investigation and preparing the final report required a clinical evaluation which McDonough knew Love was not qualified to perform, and for Love to do so would violate quality of care standards. (MM Tr. 49:1-15; 49:17-50:19; 50:20- 51:1; 51:9-20)⁴. When Love objected to completing and signing the report because she did not have a clinical background and therefore reasonably believed that for her to do so would be unethical, fraudulent and unlawful, her

⁴ Plaintiff has used the same abbreviations to refer to the deposition transcripts as Defendants. The deposition transcript pages that are referred to herein are annexed to the Certification of Francine Foner, dated April 9, 2013, submitted herewith in opposition to Defendants’ Motion for Summary Judgment (“Foner Cert.”).

supervisor became incensed and insisted that Love “do it and it and sign it because we all do and sign things here.” (Pl. Tr. 145:22-146:3).

a. Love Can Identify A Law, Rule Or Regulation That She Reasonably Believed Was Violated By Her Employer’s Activity

NHCAC is a Federally Qualified Health Center (“Health Center”) and thus its quality of care standards are not merely governed by internal hospital policies and procedures, but are regulated by state and federal regulations. On the state level, NHCAC is subject to New Jersey’s Hospital Licensing standards contained in N.J.A.C. 8:43G-1 et seq.⁵ The purpose of New Jersey’s Hospital Licensing Standards is to ensure that hospitals maintain a high quality of care and to aid patients and providers in assessing the quality of care provided:

(a) These rules and standards apply to each licensed general, psychiatric or special hospital facility. They are intended for use in State surveys of the hospitals and any ensuing enforcement actions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any acute care hospital.

(b) This chapter contains rules **intended to assure the high quality of care delivered in hospital facilities throughout New Jersey.** Components of quality care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of environment, professionalism of caregivers, and participation in useful studies.

N.J.A.C. 8:43G-1.1. (emphasis added)]

As a Health Center, NHCAC is also a publically funded agency that is mandated to comply with federal regulations, guidelines from the Department of Health and Human Services, Office of the Inspector General, and Health Resources and Services Administration (“HRSA”).

⁵ A Federally Qualified Health Center falls within the definition of covered hospitals under New Jersey’s Hospital Licensing Standards See N.J.A.C. 8:43G-1.3.

(<http://bphc.hrsa.gov/about/requirements/index.html>). To qualify and receive funding as a Health Center, a facility must meet the health center program requirements set forth in the Health Center Program Statute, Section 330 of the Public Health Service Act (42 U.S.C. § 254b), Program Regulations under 42 CFR Part 51c and 42 CFR Parts 56.201-56.604 and Grants Regulations under 45 CFR Part 74. Id. Pursuant to such regulations, Health Centers must comply with a Quality Improvement/Quality Assurance (QI/QA) program to ensure the provision of high quality patient care. (Section 330(k)(3)(C) of the PHS Act, 45 CFR Part 74.25 (c)(2), (3) and 42 CFR Part 51c.303(c)(1-2); <http://bphc.hrsa.gov/about/requirements/index.html#services1>). The regulations also specifically require that under the QI/QA program, assessments of the quality of services provided to patients “be conducted by physicians or by other licensed health professionals under the supervision of physicians.” (Id.).

Defendants’ contention that Love cannot identify any rule, regulation (or public policy⁶) pertaining to quality of care is also directly contrary to NHCAC’s CEO, Irizarry. As Irizarry unequivocally testified:

Q. Now, North Hudson is bound by Federal and State regulations to ensure quality of care standards; is that correct?

A. Correct.

Q. And you as the CEO would take seriously North Hudson's duty to ensure quality of care; correct?

A. Yes.

(CI Tr. 44:14-20)

⁶ Defendants’ conduct in attempting to force an employee without clinical training to complete and sign off on a report which required review by a clinician would also be “incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment” under N.J.S.A. 34:19-3(c), as discussed below.

In addition, Defendants' testimony clearly reveals that defendants do *not* dispute that completing the Horizon Report required a clinical evaluation, that Love was not qualified to complete the report because of her lack of clinical qualifications, **or that if Love had done so, it would have been unethical and in violation of Federal and State standards**, as well as violating JCAHO standards.⁷

Irizarry testified that a patient's not receiving lab results in a timely manner creates a potential risk to the patient's health that requires investigation by a clinical person:

Q. And when you say "results", such as blood test results?

A. Correct.

Q. Or any other results, any other examinations the patient may have gone under?

A. Correct.

Q. Because of course, you would appreciate if a patient doesn't receive their test results in a timely manner, this could cause some health issues, health concerns to that patient?

A. Correct.

⁷ North Hudson's web site touts that it has on several occasions has been "accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO)" <http://www.nhcac.org/about-north-hudson.html>. The JCAHO is "an independent, not-for-profit organization, The Joint Commission accredits and certifies more than 20,000 health care organizations and programs in the United States. Joint Commission accreditation and certification is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards." http://www.jointcommission.org/about_us/about_the_joint_commission_main.aspx. The New Jersey Licensing Standards also adopt the standards of JCAHO, as an accrediting body recognized by the Centers for Medicare and Medicaid Services (CMS) pursuant to 42 CFR Part 488, in lieu of selected licensing standards. N.J.A.C. 8:43G-1.2 Defendants' representation to the public that NHCAC is meeting these standards, when it conducts itself in a manner that is not consistent with such standards, also provides part of the factual predicate for Love's reasonable belief that her supervisor's conduct was fraudulent.

Q. And those health issues, health concerns are clinical issues; is that correct?

* * *

A. Yes.

(CI Tr., 57:4-18).

Q. Now, if there was an investigation that was done to determine if the delay in doing the patient's test results resulted in a health risk to the patient, that would be an investigation that was done with someone who had a clinical background, a medical background; is that correct? I believe you said that earlier.

A. Yes.

Q. And so the individual who would sign off on that report would be someone who has a medical background or clinical background; correct?

A. For a clinical issue, yes.

Q. You wouldn't want a person to sign off on such an investigation if they didn't have a clinical background?

A. If it was a report about a clinical delay or a delay that would harm a patient, yes.

Q. "Yes" being you wouldn't want someone to sign off on that report who did not have a clinical background?

A. Right.

(CI Tr., 59:16-60:11)

NHCAC's Chief Operating Officer, Michael Shababb ("Shababb") and McDonough also testified that they agreed that Love was not qualified to sign off on the Horizon Report, since it involved clinical issues which she was not clinically qualified to review, and that to do so would be unethical and violate quality of care standards. Shababb testified:

Q. Were you aware that Oristela did not have a clinical background?

A. Yes.

(MS Tr. 17:13-15)

Q. Did you discuss with Oristela, and you may have, what you just testified to, but just to be clear, she did not have a clinical background and therefore did not feel qualified to complete a report in response to the Horizon complaint?

* * *

A. Basically, yes. I will repeat what I think I said, which was that if it was a medical issue and she is not a medical person, that she should not respond.

(MS Tr. 42:22-43:6)

* * *

A. Whether the blood work was there or not, I think it would have to be a clinical person to make that determination as to if the doctor needed the blood work to continue treatment.

(MS Tr. 29:14-17)

Q. If she were asked to evaluate something requiring an evaluation of clinical information and to sign off on that, would you agree that would be unethical?

* * *

A. If she was asked to evaluate and sign off on it, yes, that's not her background. Yes.

Q. And it would violate hospital quality of care standards if a person without clinical qualifications completes a report requiring evaluation of clinical information?

A. If she was asked to evaluate, yes.

(MS Tr. 31:1-20)

McDonough testified:

Q. Would you agree that in order to properly respond to the Horizon complaint, North Hudson would need to investigate or evaluate the

clinical issue of whether the delay in not having the patient's test results in a timely fashion posed any risk to the patient's health?

A. Yes.

(MM Tr. 51:14-20)

Q. And you evaluated the lab results to determine whether or not the delay caused any potential risk of harm to the patient; correct?

A. Correct.

Q. And that was the evaluation that required clinical background?

A. Yes.

(MM Tr., 50:20- 51:1)

* * *

Q. So you reviewed the record in order to respond to the Horizon complaint?

A. I reviewed the record to ensure that everything was in order in terms of the quality of the record. At the time that's what I did.

Q. You determined that the delay caused no harm to the patient's health?

A. I did.

Q. And you did that based upon your clinical experience?

A. Yes.

Q. Oristela does not have clinical experience?

* * *

A. She does not.

(MM Tr., 49:1-15)

* * *

Q. So Oristela would not then be able to determine whether or not the delay in the patient's lab results being available caused any potential patient health risk?

A. No, she would not.

* * *

Q. Do you agree it would be unethical to sign off on a report requiring evaluation of clinical information if one had no clinical background?

* * *

A. Yes.

(MM Tr., 49:17-50:19)

Q. Would you agree it would violate quality of care standards if a person without clinical qualifications completed a report requiring evaluation of clinical information?

A. Evaluation of clinical information, yes.

(MM Tr., 51:9-13).

Thus, Love can identify a law, rule, or regulation that she reasonably believed Defendants violated by requiring Love to perform clinical functions for which she was not qualified. In fact, evaluation of the services provided to the patient in the Horizon Complaint was precisely the type of assessment of the quality of services provide to patients that the federal regulations cited above require "be conducted by physicians or by other licensed health professionals under the supervision of physicians, and not nonclinical staff members such as Love.

Love's complaints also concern the public policy of ensuring that complaints requiring a qualitative review of the clinical data in a patient's record be investigated by properly qualified clinical staff.

b. Love's Belief, That Defendants' Conduct Violated A Law, Rule, Or Regulation Promulgated Pursuant To Law, Or A Clear Mandate Of Public Policy, Was Reasonable

A plaintiff who brings a claim under CEPA bears the burden of articulating the law or public policy being violated, but is not required to identify the specific statute or public policy at issue. Mehlman v. Mobil Oil Corp., 153 N.J. 163, 193 (1998). The Mehlman Court noted that “[t]he object of CEPA is not to make lawyers out of conscientious employees” and thus was satisfied by a plaintiff’s reasonable belief that the employer’s conduct was “incompatible with a constitutional, statutory or regulatory provision, code of ethics, or other recognized source of public policy,” without a more specific showing. Ibid.

As described above, Love investigated and completed the nonclinical portion of the investigation and response to the Horizon Complaint. (WHH Cert., Exs. O and R; Pl. Tr. 130:25-131:3). It was entirely reasonable for Love to believe that for her to review and evaluate the clinical portions of the patient’s record, in order to determine whether the 2½ week delay in having the test results available caused any risk of harm to the patient, would violate regulations governing patient quality of care standards, since Love had no clinical background. In fact, this is exactly what Love objected to and what Defendants insisted she do. Because Love maintained her objection, Defendants retaliated against her and terminated her.

It is shocking to consider that Love was put in a position in which she was forced to choose between following a directive that was obviously fraudulent and illegal, or refusing to comply with her supervisor’s demand. Even so, Love need only have a reasonable belief that the law was violated, and need not show an actual violation to satisfy this element of CEPA. Gerard,

supra, 348 N.J. Super. at, 522-523; Ivan v. County of Middlesex, 595 F. Supp. 2d 425, 469 (D.N.J. 2009), citing Roach, supra at 613; N.J.S.A. 34:19-3c(1) and c(2).

The reasonableness of Love's belief was confirmed by Irizarry, Shababb and McDonough, who each testified that they also believed that requiring Love to prepare and sign the Horizon report violated quality of care standards because that would require her to make a clinical assessment that she was not qualified to make or sign off on. (MM Tr. 49:1-15; 49:17-50:19; 50:20-51:1; 51:9-13; and 51:14-20; MS Tr. 17:13-15; 31:1-20; 42:22-43:6; CI Tr., 57:4-18; 59:16-60:11). This is not in dispute. As stated above, McDonough agreed that her asking Love to complete and sign off on the report, without further elaboration, necessarily implicated clinical functions.

McDonough disputes only the factual issue of her asking Love to complete and sign the report, contending that she only asked Love to "take a stab at it" and she would complete and sign the report. . (MM Tr. 62:25-63:1). This is entirely contrary to Love's allegations and sworn testimony that McDonough, in an intimidating and threatening manner, insisted that Love complete and sign the report herself, stating " You do it and sign it because we all do and sign things here." (Pl. Tr. 145:22-146:3). In addition, Love also testified that McDonough intimidated the clinical staff member who had taken the file to complete the clinical review, into handing over the file to Love. (Pl. Tr. 142:5-25; 172:7-15). This material fact that is hotly disputed is one of the many reasons why Defendants' application should be rejected.

Whether or not McDonough requested that Love complete and sign the report is clearly a disputed material factual issue. There is ample evidence for a jury to conclude that McDonough did in fact insist that Love complete and sign the report. In addition, Love need not prove this

fact by direct evidence; rather, a jury may decide that Love had a reasonable belief based upon the circumstances. Iyan, supra, 595 F. Supp. 2d at 469. Thus, this critical disputed material issue of fact alone warrants denial of summary judgment.

Love's testimony and written proofs reflect that McDonough directed Love to complete and sign the Horizon Report without the assistance of any clinical staff, which by itself suffices to create a factual dispute warranting denial of summary judgment.⁸ (WHH Cert., Exs. R, Q, W; Pl. Tr. 137:13-138:4; 140:4-10). Additional evidence of this fact includes: (1) McDonough's email that directly asked Love "to prepare the report" (WHH Cert., Ex. N); (2) when Love requested assistance to prepare the report, as she did not have the background to do it, McDonough did not assign any clinical staff to work with her. (Pl. Tr., 150:16-21); (3) when Love spoke with Shababb about her concerns of what she was being requested to do in response to the Horizon Complaint, he agreed that McDonough should have assigned clinical staff to work with her and should do so in the future and that Love should not perform a clinical task if she was asked to do so. (Pl. Tr. 150:23-151:23; MS Tr. 31:1-20; 52:19-53:8); (4) McDonough's statement that she would later "review" the report did not relieve Love of having to perform clinical tasks for which she was not qualified; Love was still tasked with reviewing the patient's

⁸ Plaintiff's testimony can be sufficient to create a genuine dispute about this material issue. Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3rd Cir.1990) (noting that "there is no rule of law that the testimony of a discrimination plaintiff, standing alone, can never make out a case of discrimination that could withstand a summary judgment motion"); Graham v. F.B. Leopold Co., Inc., 779 F.2d 170, 173 (3rd Cir.1985) (observing that plaintiff's deposition testimony could suffice to create a genuine dispute about material issue); Waldron v. SL Indus., Inc., 56 F.3d 491, 501 (3rd Cir.1995) (stating that "Supreme Court has made it clear that self-serving testimony may be utilized by a party at summary judgment") (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986)).

lab results and medical history, which she had no way of evaluating, to determine whether there was any quality of care issue in the lab results not having been available; (5) Love's written rebuttal on the retaliatory warning expressly stated that her reason for not complying with her supervisor's directive was because she was not a "clinical person" and the report required an evaluation of "clinical processes". (WHH Cert., Ex. Q); (6) Love's written complaints of April 26, 2010 and November 2, 2010 explain that her reason for not following McDonough's directive was because she was not clinically qualified to perform what required clinical tasks; (WHH Cert., Exs. R and W); (7) Shababb also testified that "at some point" he "knew that Love's reason for not writing the letter was because her background is not clinical." (MS 81:24-82:4); (8) McDonough's contention that she was not asking Love to prepare and/or sign off on the clinical portion of the report and that Love did not raise that as a reason for declining to follow McDonough's directive is also inconsistent with her testimony that at a meeting to discuss Love's refusal to prepare the report, McDonough agreed that "Oristela said it was clinical at the meeting... that referred to her wanting Nishie, who is a clinical person, to do the clinical portion of the report" and that Love wanted "somebody that was of a clinical nature to write the letter instead of herself." (MM Tr. 74:14-17; 76:11-19); and (9) McDonough also testified that even though she did not assign a clinical person to work with Love, having a clinical person work with Love was consistent with NHCAC's protocol. (MM Tr., 74:24-75:5).

In addition, Love's reasonable belief that Defendants' conduct violated a statute, rule or regulation, or public policy in the within matter is entirely distinguishable from the decisions cited by Defendants.

In Smith-Bozarth v. Coalition Against Rape and Abuse, Inc., 329 N.J. Super. 238, 244 (App.Div. 2000), the court found that there was no law, rule or regulation, or clear mandate of public policy that prohibited the head of a social services agency from obtaining unrestricted access to the files of the agency's clients. The employee objected to disclosing a client's files to the head of the social services agency based upon regulations that prohibited communication of confidential information between victims of sexual abuse and their counselors. However, the cited regulations did not prohibit an employee of a social services agency from disclosing such communications to the head of the agency. Therefore, based upon those facts, the Smith-Bozarth Court found that the cited regulation did not apply. This is entirely distinguishable from the within matter, in which there can be no dispute that NHCAC's quality of care standards are governed by regulations promulgated pursuant to law, specifically N.J.A.C. 8:43G-1 *et seq.*, and federal regulations with which NHCAC as a Health Center is required to comply, under the Health Center Program Statute, Section 330 of the Public Health Service Act (42 U.S.C. § 254b), Program Regulations under 42 CFR Part 51c and 42 CFR Parts 56.201-56.604 and Grants Regulations under 45 CFR Part 74.

Further, NHCAC's CEO confirmed the same when he testified that North Hudson "is bound by Federal and State regulations to ensure quality of care standards." (CI Tr. 44:14-24).

In addition, the Supreme Court in Dzwonar called in to question the validity of Smith-Bozarth in so far as its holding requires that a plaintiff must allege facts that, if true, actually would violate that statute, rule, or public policy. Dzwonar, *supra*, 177 N.J. at 463.

Klein v. University of Medicine and Dentistry of New Jersey, 377 N.J. Super. 28 (App. Div.) *certif. denied*, 185 N.J. 39 (2005), also relied upon by Defendants, is equally inapposite to

the facts of the present case. As Defendants concede in their brief, Dr. Klein complained about the violation of internal hospital policies and failed to otherwise identify any statute, rule, or regulation promulgated pursuant to law, or clear expression of public policy, that related to the conduct complained of. While Dr. Klein referred to regulations that permitted only qualified persons to administer anesthesia and that a qualified person should be continuously present and performing or assisting in the operation, he did not claim that the Radiology Department failed to do any of these things. *Id.* at 43. Rather, the record was “devoid of any evidence, nor does plaintiff even allege, any state or federal regulatory violations committed by the Radiology Department for the concerns he expressed in this litigation.” *Id.* at 44. In addition, the Klein Court found that Dr. Klein’s belief of an improper quality of patient care or a violation of law or public policy in the Radiology Department was also undermined because he intended “to resume his duties upon restoration of full clinical privileges and receipt of a written acknowledgement by defendants of their confidence in his clinical skills and an apology for their actions.” *Id.* at 44-45. Thus, such facts indicated that the dispute in Klein was simply a disagreement with the manner in which the hospital was operating one of its medical departments, which concerned space, staffing and budgetary issues, rather than the “qualification” issues covered by referenced regulations. *Id.* at 44. As the Klein Court recognized, while “CEPA is not intended to shield a constant complainer who simply disagrees with internal operational procedures,” that is only so “*provided the operation is in accordance with lawful and ethical mandates.*” (emphasis added) *Id.* at 42-43.

The facts of Klein are clearly distinguishable from those of the present case. Unlike the plaintiff in Klein, Love did not have a mere personal disagreement with management and was

not willing to retract her retaliation claim (despite the extreme pressure by Defendants to do so) in exchange for Defendants' agreement to not terminate her and an apology. In Klein, the plaintiff failed to specifically identify any conduct of defendant that violated any rule, law, regulation or public policy. Rather, he simply asserted generally that there were staffing and space issues. In contrast, here, Love does allege and has specifically identified regulations that Defendants violated (in addition to fraudulent conduct, as discussed below) *for the specific concerns that she expressed in this litigation*. Health Centers must comply with a Quality Improvement/Quality Assurance (QI/QA) program to ensure the provision of high quality patient care. (Section 330(k)(3)(C) of the PHS Act, 45 CFR Part 74.25 (c)(2), (3) and 42 CFR Part 51c.303(c)(1-2); <http://bphc.hrsa.gov/about/requirements/index.html#services1>). These regulations also specifically require that under the QI/QA program, assessments of the quality of services provided to patients "be conducted by physicians or by other licensed health professionals under the supervision of physicians." (Id.)

Unlike the situation in Klein, in which the regulations relied upon did not concern the Defendants' alleged conduct, the regulations cited herein are specifically concerning the type of conduct which Love refused to participate in because she reasonably believed it was unethical, fraudulent and in violation of laws governing quality of care standards. Evaluation of the services provided to the patient in the Horizon Complaint was precisely the type of assessment of the quality of services provide to patients that the regulations cited above require "be conducted by physicians or by other licensed health professionals under the supervision of physicians." Id.

The regulations referenced alone are consistent with numerous other medical care regulations that mandate that the individual doing a medical/clinical assessment be a qualified

medical/clinical person. See, e.g., 42 U.S.C. 1395dd, et seq. (The Emergency Medical Treatment and Active Labor Act); 42 CFR 489.24(a); social work regulations such as the Social Work Licensing Act, N.J.S.A. 45:15, et seq.; N.J.A.C. 13:44 et seq.; N.J.S.A. 45:9-42 et seq. (“New Jersey Clinical Laboratory Improvement Act”).

In addition, while Defendants attempt to minimize Love’s concerns as insignificant or a mere disagreement, in fact, Love’s complaint explained her specific concerns about performing clinical functions in responding to the Horizon Complaint, for which she was not qualified, not merely a general “broad brush” complaint about patient safety, or about general staffing issues, or the size or layout of the area in which she worked. Thus, Love voiced specific concerns which she reasonably believed to be in violation of the law or public policy of providing quality of care and properly addressing a particular patient complaint by assigning clinical staff to review clinical issues that the complaint implicated. See Espardinez v. Atlantic Health Sys./Atl. Health, 2009 N.J. Super. Unpub. LEXIS 3237, 10-11 (Law Div. Nov. 20, 2009) (distinguishing the “trivial” and ephemeral” complaints made by the plaintiff in *Klein* from a plaintiff who expresses concerns regarding a specific issue of patient care or treatment).

Love’s belief that Defendants’ conduct was fraudulent and unlawful was not based upon her own personal morals or beliefs, but was objectively reasonable. See McLelland v. Moore, 343 N.J. Super. 589, 600, (App. Div. 2001), *certif. denied*, 171 N.J. 43 (2002); Warthn v. Toms River Community Memorial Hospital, 199 N.J. Super. 18, 1985 N.J. Super. LEXIS 1177 (App.Div. 1985) (distinguishing an employee’s personal or moral beliefs from an objective reasonable belief that that a violation of law occurred). The objectively reasonable nature of Love’s belief is further underscored by the fact that Irizarry, Shababb and McDonough all held

the same belief that asking Love to complete and sign the Horizon report would be unethical and in violation of patient quality care standards. (MM Tr. 49:1-15; 49:17-50:19; 50:20-51:1; 51:9-13; and 51:14-20; MS Tr. 17:13-15; 31:1-20; 42:22-43:6; CI Tr., 57:4-18; 59:16-60:11).

Accordingly, Love respectfully petitions the Court to find that as a matter of law Love has satisfied her burden with respect to the first element of her CEPA cause of action, and deny Defendants' Motion for Summary Judgment.

ii. **Love Engaged In Protected Activity Under CEPA**

CEPA specifically protects an employee who

Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer ... that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law[;] ...

[N.J.S.A. 34:19-3a]

Or who

[o]bjects to or refuses to participate in any activity, policy or practice which the employee reasonably believes:

- (1) is in violation of a law, or a rule or regulation promulgated pursuant to law;
- (2) is fraudulent or criminal; or
- (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

[N.J.S.A. 34:19-3c (emphasis added).]

a. **Love Engaged in Protected Activity Under N.J.S.A. 34:19-3a**

In April 2010, Love refused to abide by her supervisor's demand that she perform a clinical function that she was not qualified to perform. Despite her objections and request to have someone work with her, McDonough continued to insist that Love somehow undertake this clinical task without any assistance from a clinical staff member. (WHH Cert., Ex. R; MM Tr., 74:24-75:5). In April 2010 (WHH Cert., Ex. R), and again in November 2010 (WHH Cert., Ex. W), Love disclosed this improper conduct by way of her complaints to the CEO and Human Resources Director, respectively, about being asked to perform what she reasonably believed was, in addition to being fraudulent,⁹ unethical and in violation of quality of care standards. Irizarry, as CEO, oversaw the entire organization had the authority to discipline and terminate Love. (CI Tr., 32:23-33:10; 35:14-17). Despite tremendous pressure by upper management to retract her complaint, Love refused to withdraw her complaint of retaliation and it is not disputed that she was terminated solely for her refusal to withdraw her complaint. (Defendants' Statement of Undisputed Material Facts, ¶107). Love does dispute, however, that she ever verbally retracted any of her complaints. (Pl. Tr., 274:6-16; WHH Cert., Exs. Y and AA).

Defendants also erroneously assert that Love could not have disclosed the unlawful conduct because McDonough gave Love a disciplinary warning before the disclosure. Defendants again distort the record and mislead the Court by ignoring that the adverse retaliatory action was not simply the disciplinary warning, but was Love's termination. As Defendants are well aware, Love's termination occurred not long *after* Irizarry's review a second time in November 2010 of Love's complaint of McDonough's fraudulent and unlawful conduct of April 2010, and Love's refusal to participate in such conduct. (CI Tr., 137:1-9).

⁹ Love's belief that such conduct was fraudulent is a separate basis for liability under N.J.S.A. 34:19-3(c)(2).

Thus, Love engaged in protected activity under N.J.S.A. 34:19-3a.

b. Love Engaged in Protected Activity Under N.J.S.A. 34:19-3c

Defendants assert that Love failed to engage in protected activity under N.J.S.A. 34:19-3c based upon their contention that the complained of conduct did not implicate a public policy or have public ramifications. When a plaintiff brings a complaint under section 3.c.(3), employees must specifically prove that their complaints involve a matter of public interest. Estate of Frank L. Roach v. TRW, Inc., 164 N.J. 598, 609 (2000). However, complaints under section 3.c(1) or 3.c(2) do not have that same requirement. Id

N.J.S.A. 34:19-3c(1) and (2) provide that a plaintiff engages in protected activity when he or she objects to participate in conduct that is “in violation of a law, or a rule or regulation promulgated pursuant to law,” 3.c(1), or “is fraudulent or criminal.” 3.c(2).

As discussed above, Love reasonably believed that requiring Love to complete and sign an investigation that required a qualitative review of the patient’s medical history and lab results violated quality of care standards promulgated pursuant to law.

In addition, Love specifically further objected to completing an investigation that required a qualitative review of a patient’s medical history and lab results, and signing her name to a report for which she was not qualified or authorized to sign, on the ground that the same would also be fraudulent. (WHH Cert., Ex. W). The five elements of common-law fraud are:

- (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.

Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (N.J. 1997), citing Jewish Ctr. of Sussex County v. Whale, 86 N.J. 619, 624-25, (1981). As Defendants recognize in their brief, “the specific knowledge of the legal source of the alleged fraud or crime is not required,” and plaintiff need only possess a reasonable belief that the complained of activity was fraudulent or unlawful.” (Defendants’ Brief, p. 7). Mehlman, supra at 193-194.

Defendants assert that Love’s claim that she was asked to commit a fraud occurred more than six months after the whistleblowing activity. However, the whistleblowing activity was not simply Love’s refusal in April 2010 to follow her supervisor’s unlawful directive. Rather, Love engaged in protected conduct by way of her complaints in April 2010 and November 2010 objecting to McDonough’s unlawful conduct and requirement that Love participate in the same. While, no investigation or remedial action was taken in the interim, Defendants’ own failure to address Love’s complaint cannot be used against her to make it appear that she delayed in making a complaint.

Equally deceptive is Defendants’ taking excerpts from Love’s deposition out of context to imply that Love testified that what McDonough asked her to do was within the scope of Love’s job. Love testified that investigating the lost record and preparing the initial response was within the scope of her job, because that is what she did complete and provided to McDonough. (WHH Cert., Ex. O; Pl. Tr. 118:22-119:15). However, what McDonough asked Love to then do (after Love investigated the issue of whether the record had been lost and provided that part of the response), was to complete the clinical portion of the investigation and sign off on it; for this Love was **not** qualified and this clinical assessment was **not** within the scope of her job, and Love reasonably believed to do so would be unlawful and fraudulent.

Defendants misrepresent Love's testimony to improperly imply that her responses meant that preparation of the full response to the Horizon Complaint involved no more than determining if the record had been lost and the blood work had not been available. If that were true, there would be no reason for McDonough to have asked Love to prepare a response, since Love had already investigated those issues and provided the results of that investigation to McDonough (WHH Cert., Ex. O; Pl. Tr. 118:22-119:15). Nor would there have been a reason for McDonough to respond to Love that at the meeting on April 20, 2010 to discuss the response to the Horizon report that "You do it and sign it because we all do and sign things here. Because if we going to go down, we all are going to go down." (Pl. Tr. 144:12-15). In other words, Love should have joined Defendants in participating in conduct that would "bring them down," which is effectively a euphemism for unlawful and fraudulent activity.

Love's representing to Horizon that an investigation of a complaint that raised potential quality of care issues had been properly performed when she was not qualified to perform the same would have been a knowingly fraudulent misrepresentation to Horizon on which it would have relied, to its detriment. However, even if the activity that Love refused to participate in was not actually fraudulent, that is not required, but as the statute provides, only that Love reasonably believed so. See also Gerard, supra, 348 N.J. Super. at, 522-523; Ivan v. County of Middlesex, 595 F. Supp. 2d 425, 469 (D.N.J. 2009), citing Roach, supra at 613; N.J.S.A. 34:19-3c(1) and c(2).

Nor does the fact that the report that was ultimately sent to Horizon did not expressly discuss the clinical issues negate the fact, unanimously agreed to by Defendants, that the investigation had to be completed by a clinical staff member with a medical background. In

addition; Love's duty to check a medical record to see if a certain medication was ordered, is not equivalent to what was required of Love to complete the investigation and Horizon Report. Rather, to perform the latter would have involved not just checking whether the lab results were ordered, but reviewing a patient's medical history and the lab results that were subsequently performed to determine whether there was any risk of harm to the patient caused by the 2½ week delay. Irizarry, Shababb and McDonough all agreed that such clinical review was required to respond to the Horizon Report, that Love was not qualified to perform such a clinical review, and that her doing so would be unethical and violate quality of care standards (MM Tr. 49:1-15; 49:17-50:19; 50:20-51:1; 51:9-13; and 51:14-20; MS Tr. 17:13-15; 31:1-20; 42:22-43:6; CI Tr., 57:4-18; 59:16-60:11).

Thus, Love's refusal to engage in unlawful and fraudulent activity, as demanded by her supervisor, squarely falls into the category of expressly protected conduct under N.J.S.A. 34:19-3c(1) and N.J.S.A. 34:19-3c(2).

Love's complaints also involve a matter of public interest. It cannot be denied that ensuring that complaints concerning quality of care issues are properly investigated by clinically qualified staff is a matter of public interest and concern.

Thus, Love has satisfied the second element of Love's CEPA cause of action.

iii. An Adverse Employment Action Was Taken Against Love

CEPA defines "retaliatory action" as "the discharge, suspension or, demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." N.J.S.A. 34:19-2(e). Ivan, supra, 595 F. Supp. 2d at 473. Defendants clearly misstate, mischaracterize, and omit evidence to imply that the only retaliation

at issue was the retaliatory warning that immediately followed Love's whistleblowing activity in April 2010. Love did not only experience that retaliation, but in fact the worst retaliation possible-- termination. It is that adverse action which forms the factual predicate for satisfaction of the third element of Love's CEPA claim, not merely the retaliatory warning that followed her refusal to participate in unlawful and fraudulent activity, and the continued retaliation leading up to her termination. Merely because Love's supervisor continued a campaign of retaliation against her does not change that Love was terminated shortly after her second complaint about the unlawful and fraudulent conduct in which she was asked to participate and her refusal to retract her complaint.

Nor is Defendants' contention that Irizarry had no involvement in the events of April 2010 either credible or consistent with the record. Love does not admit that Irizarry was unconnected with the whistleblowing activity. To the contrary, Love discussed the events of April 2010 and the retaliatory warning with Irizarry immediately following McDonough's giving her the warning, and he requested that she put everything writing and he would address it on the following Monday. (Pl. Tr. 167:1-17). Irizarry testified that he reviewed Love's April 26, 2010 and November 2, 2010 complaints detailing the events of April 2010. (CI Tr., 137:1-9). After doing so, he directed that Shababb terminate Love because she refused to withdraw her complaints of fraud and retaliation. (Defendants' Statement of Facts, ¶107). Thus, Love was terminated for her refusal to participate in what she reasonably believed to be unlawful and fraudulent conduct, her complaint of fraudulent and unlawful conduct, and her refusal to retract her complaint.

**iv. A Causal Connection Exists Between Love's
Whistle-Blowing Activity And The Adverse Employment Action**

Defendants attempt to create a false impression that Love had continuing issues with McDonough and McDonough's conduct in April 2010 and retaliation that followed was just part of a series of hostile treatment by McDonough. This is nothing more than a red herring designed to detract from the fraudulent and unlawful nature of McDonough's conduct, as well as the major change that occurred in McDonough's treatment and marginalization of Love after she refused to participate in the unlawful and fraudulent conduct. Despite that McDonough was not a "warm and fuzzy" supervisor, what occurred after Love refused to follow her directive to complete and sign the report, went far beyond any prior disagreements between them and was designed to set up Love for termination. As Love testified about what was different:

Difference (*sic*) is what she asked me to do. And that in April 2010 it was beyond to her behavior before. Now she's asking me to do something that was illegal because it was based on a documentation in the medical -- clinical documentation in the medical record of that patient

(Pl. Tr. 379:19-24).

Love further testified:

Before 2010, before the warning, actually, they were kind of no more communications kind of things. Issues. But after the incident with the warning, it was a retaliatory behavior. Maureen was holding my professional development by not sending me to those EMR meetings, training. When I was the Director of Medical Records, my department was the one that were going through transitioning into the electronic health record. I put them together. That department from the first day, it was nothing there. I develop it. I was well aware of what's the paper medical record was. So now for this transition, I was supposed to be the first one to receive that training and she didn't send me for that training.

And also not giving me the support to take care of the issue that I have with Nelly, knowing that -- with what Nelly was doing there was disrupting the functioning of the department. Creating chaos in the department. Was

impacting on patient care. Provider was calling and complaining because the labs was not in the reports. Nurses were complaining also because labs were not in the reports. And some of those reports were even abnormal reports. Maureen, as a provider, she knew better and didn't take care of that. The other thing, I believe, was inappropriate from her was instructing Sonia, as I said, to give her a report on what was going on in my department. I was the director of the department and I just telling Sonia telling me in my face that she has to instruct to Sonia. I was the director of the department. She was supposed to talk to me and not talking to Sonia. All of that is beyond what happened before that April 2010.

(Pl. Tr. 400:3-401:13)

In November 2010, Barbara Blake Kimble, Human Resources Director, raised with Love that she received a warning in April 2010 for refusing her supervisor's directive, that Love's file was being reviewed and Kimble was waiting for a letter from McDonough. Love again put her complaint of the fraudulent and unlawful conduct in which she refused to participate in writing and requested that the warning be retracted. (WHH Cert., Ex. W). Defendants then exerted tremendous effort upon Love to retract her complaint, and when she refused, and continued to maintain her complaint, Irizarry terminated her for that reason. Thus, there could not be a clearer causal connection between Love's whistleblowing activity and her termination.

v. Defendants' Purported Reason For Terminating Love Is Pretext

Finally, Love has set forth sufficient proofs for a reasonable jury to conclude that Defendants' purported reason for terminating Love was a pretext to cover up the true reason for her termination—to retaliate against her for engaging in protected whistle-blower activity.

As CEPA cases are analyzed using the framework for retaliatory discharge claims under Title VII and the LAD, the plaintiff has the ultimate burden to show that the employer's proffered reasons for terminating plaintiff are pretext for retaliation. Kolb v. Burns, 320 N.J.

Super. 467, 476-78 (App. Div. 1999) (citing Romano v. Brown & Williamson Tobacco Co., 284 N.J. Super. 543, 551 (App. Div. 1995)).

A plaintiff may show pretext by demonstrating either (1) that the defendant's articulated legitimate reasons are untrue; or (2) that intentional discrimination [or retaliation] was more likely than not a determinative factor in the decision. Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1108 (3d Cir. 1997).

Under the first prong, a plaintiff must "demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." Id. at 1108-09. On the other hand, under the second prong, plaintiff may present evidence which if believed would allow a jury to conclude that discrimination [or retaliation] played a role in the decision making process and that it had a determinative influence on the outcome of that process. Maiorino v. Schering-Plough Corp., 302 N.J. Super. 323, 344 (App. Div. 1997); certif. denied, 152 N.J. 189 (1997).

In the present matter, there is ample evidence to suggest that Defendants' so-called legitimate reasons for termination were pretext. Although Defendants claim that Love was terminated because she allegedly recanted her claim of fraud and retaliation and that the same was a reason to terminate her, a jury could reasonably conclude that this reason is pretextual upon two grounds: First, Love's own testimony and written communications to Defendants vehemently objecting to their claim that Love ever recanted her retaliation claims.¹⁰ Second, while Defendants claim that Love's complaint was without merit, and her refusal to withdraw

¹⁰ See footnote 8, supra.

her complaint because they determined it to be without merit was a legitimate reason for her termination, defendants did not similarly terminate, or even discipline, at least two other employees who made what Defendants considered to be meritless complaints.

NHCAC believed that the complaints made by Love's reports Nelly Gourzis and Maribel Rodriguez against Love were without merit. (CI Tr. 210:6-21). Gourzis was not disciplined for making a meritless complaint against her supervisor. (CI Tr. 210:6-21). Gourzis was terminated by NHCAC, but her termination was not based in any part on having made a meritless complaint against her supervisor. (CI Tr. 210:6-21). Maribel Rodriguez was not terminated or otherwise disciplined for making a meritless complaint against her supervisor. (CI Tr. 210:6-21).

Accordingly, Love has set forth sufficient evidence by which a reasonable jury could conclude that a causal relationship between Love's conduct and her termination is established, and that Defendants' purported legitimate reason for terminating Love is pretext.

POINT III

LOVE HAS SET FORTH A COGNIZABLE CLAIM FOR PUNITIVE DAMAGES UNDER THE CEPA STATUTE

Love has set forth more than enough facts for a reasonable jury to conclude that Love is entitled to punitive damages as remedy for her CEPA claim, which statute explicitly provides for such damages.

CEPA specifically provides that a prevailing plaintiff may be awarded punitive damages. N.J.S.A. 34:19-5(f). The New Jersey Supreme Court has expressly held that punitive damages are available against public entities notwithstanding the Tort Claims Act. Green v. Jersey City

Bd. of Educ., 177 N.J. 434 (2003). Further, CEPA claims are expressly excluded from the punitive damages cap provided for in the Punitive Damages Act. N.J.S.A. 2A:15-5.14(c).

In determining liability for punitive damages, the same standards that apply to Law Against Discrimination (“LAD”) claims are applicable to CEPA claims. Abbamont v. Piscataway Tp. Bd. of Educ., 138 N.J. 405, 419 (1994). Specifically, in a CEPA action, an employer is liable for punitive damages only in the event of actual participation or willful indifference by managerial or supervisory employees. Ibid. Additionally, the conduct complained of must be wantonly reckless or malicious. Nappe v. Anschelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 49-50 (1984).

A. THE RETALIATORY CONDUCT AT ISSUE HERE WAS ENGAGED IN BY “UPPER MANAGEMENT”

In the case of Cavuoti v. N.J. Transit Corp., the New Jersey Supreme Court addressed the question of how to determine if an employee is a member of “upper management” for purposes of awarding punitive damages under the LAD. 161 N.J. 107, 121-29 (1999). Specifically, the Court noted:

[I]t is fair and reasonable to conclude that upper management would consist of those responsible to formulate the organization’s anti-discrimination policies, provide compliance programs and insist on performance policies in the workplace, who set the atmosphere or control the day-to-day operations of the unit (such as *heads of departments*, regional managers, or compliance officers). For an employee on the second tier of management to be considered “upper management,” the employee should have either (1) broad supervisory powers over the involved employees, including the power to hire, fire, promote, and discipline, or (2) the delegated responsibility to execute the employer’s policies to ensure a safe, productive and discrimination free workplace.

[Id. at 128-29.]

Irizarry terminated Love because of her disclosure to him of what she reasonably believed to be unlawful and fraudulent conduct by her supervisor and her refusal to withdraw that complaint. It is clear based on the above definition that Irizarry, as president and CEO, was part of upper management and oversaw the entire organization. (CI Tr., 32:23-33:10). Irizarry had the authority to discipline and terminate Love. (CI Tr. 35:14-17). Further, Irizarry, McDonough and Shababb also actively participated in and/or were willfully indifferent to the termination, as, rather than address Love's complaint of fraud and retaliation, Irizarry, Shababb and McDonough insisted that Love's complaints were without merit, that she should not have used the word "retaliation" and pressured her to retract them. (Pl. Tr. 274:17-24; 374:21-375:9; MS Tr. 101:7-13; 101:18-25; 106:23-107:6). McDonough also pressured Love to "be a team player" by agreeing that she was not retaliated against (MM Tr. 166:5-13) and Shababb carried out the termination on Irizarry's behalf. (Defendants' Statement of Facts, ¶¶109-110). It is also clear that Shababb and McDonough were part of upper management, as McDonough was Love's direct supervisor with the authority to discipline and terminate Love (CI Tr. 34:12-35:13; MM Tr. 31:7-10) and Shababb had supervisory authority over Love. (MS Tr.14:13-15).

Accordingly, a reasonable jury could certainly conclude that Irizarry, Shababb and McDonough were "upper management" employees for purposes of punitive damages.

B. THE RETALIATORY CONDUCT AT ISSUE HERE AMOUNTED TO "WANTONLY RECKLESS OR MALICIOUS" CONDUCT

"To warrant a punitive award, the defendant's conduct must have been wantonly reckless or malicious." Nappe v. Anschelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 49 (1984). That is, "[t]here must be an intentional wrongdoing in the sense of an 'evil minded act' or an act

accompanied by a wanton and willful disregard of the rights of another...The key to the right to punitive damages is the wrongfulness of the intentional act.” Id. at 49-50. The requirement of willfulness or wantonness “may be satisfied upon a showing that there has been a deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to the consequences.” Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962).

Here, Love has set forth ample facts for a reasonable jury to conclude that the conduct of Irizarry, Shababb and McDonough was wantonly malicious and willful. Irizarry admittedly terminated Love for no other reason than her maintenance of her complaint of retaliation and fraud and her refusal to retract them, even though there was never any investigation conducted into Love’s complaint. (CI Tr. 153:19-154:1; 169:4-8; 178:21-24; 191:7-19). While Irizarry contends that Love verbally informed him that she was not retaliated against, Love’s testimony and written communications to Irizarry vehemently dispute the same, which itself is a disputed issue of material fact that alone should preclude summary judgment.¹¹

The record also reflects that Irizarry, Shababb and McDonough insisted that Love’s complaint was without merit, that she should not have used the word “retaliation” and pressured her to retract her complaint. (MS Tr. 101:7-13; 101:18-25; 106:23-107:6; Pl. Tr. 274:17-21; 374:21-375:9). McDonough also pressured Love to “be a team player” and withdraw her complaint. (MM Tr. 166:5-13).

In short, Love has offered significant evidence that the conduct of Irizarry, as well as of McDonough and Shababb was a willful, deliberate attempt to retaliate against an employee for engaging in protected whistle-blower activity. Such conduct warrants punitive damages.

¹¹ See footnote 8, supra.


CONCLUSION

Love has set forth ample proofs for a reasonable jury to conclude that she has met each and every element of a CEPA claim: (1) she reasonably believed that her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or public policy; (2); she engaged in protected conduct (3) an adverse employment action was taken against her; and (4) a causal connection exists between her protected activity and the adverse employment action.

Finally, Love has set forth a cognizable claim for punitive damages because: (1) the retaliatory conduct against Love was taken by a member of upper management, and (2) the conduct in which Defendants engaged was "wantonly reckless or malicious."

Accordingly, Defendants' motion must be denied and the within matter must be permitted to proceed to the factfinder.

Respectfully submitted,
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