NEW YORK STATE
DIVISION OF HUMAN RIGHTS

[redacted], Complainant, v. **GARNET HEALTH MEDICAL CENTER**, Respondent.	Case No. __________ **COMPLAINT**

INTRODUCTION

1. [redacted] had always dreamed of the day she would become a mother. Yet Garnet Health Medical Center ("GHMC") turned what should have been the happiest day of her life into the most traumatic—all because she had eaten a salad with poppy seed dressing.
2. GHMC drug tested [redacted] without her knowledge or consent and reported a single unconfirmed, false positive drug test result to the New York State Central Register of Child Abuse and Maltreatment ("State Central Register").
3. GHMC drug tested [redacted] without her consent despite the fact that there is no medical justification for drug testing all perinatal patients and the practice is widely opposed by leading medical organizations; and then reported her to the State Central Register even though her baby was healthy and tested negative for any controlled substances.
4. GHMC's report of the unconfirmed, false positive test prompted a highly invasive child abuse investigation that concluded that the report was unfounded.

5. Even though the report was determined unfounded, ’s name will be listed under seal on the State Central Register for years to come.
6. As a matter of pattern and practice, GMHC routinely drug tests perinatal patients without their consent on the basis of their pregnancy and sex, despite the fact that they do not drug test any other class of patients—including fathers—and report patients who receive unconfirmed positive tests to the State Central Register. This selective and discriminatory treatment violates the New York State Human Rights Law (“NYSHRL”).
7. GHMC also barred from breastfeeding her baby on the basis of the unconfirmed, false positive test, despite the fact that begged through her tears to be provided a confirmatory test and be allowed to breastfeed.
8. GHMC made false and stigmatizing claims in the medical records of and her baby, including that her baby had “in utero drug exposure,” and repeatedly ignored ’s requests to amend the records.
9. GHMC’s discriminatory and accusatory treatment of turned what should have been the happiest occasion of her life into a nightmare, leading to lasting emotional and psychological pain and suffering, humiliation, and trauma for and her family.
10. files this complaint to ensure that GHMC ceases its unlawful discriminatory practice of non-consensually drug testing perinatal patients and institutes related policies, procedures, and training. also seeks a declaration that non-consensual drug testing of perinatal patients violates the NYSHRL, a letter of apology, corrections to her medical records and those of her

baby, damages, attorney's fees, and any other relief the Commissioner deems proper.

PARTIES

11. Complainant [redacted] is an adult resident of [redacted], New York.
12. Respondent Garnet Health Medical Center ("GHMC") is a not-for-profit corporation with a principal place of business located at 707 East Main Street, Middletown, NY 10940 which is duly authorized to conduct business within the State of New York. Respondent GHMC was, at all times relevant, acting by and through its duly authorized agents, employees and/or assigns, who were then and there acting within the course and scope of their employment and in accordance with the customs, policies, and practices of GHMC. GHMC is a place of public accommodation as defined by the New York State Human Rights Law, Executive Law § 292.

FACTS

13. At a time when a new mother should be enjoying the most momentous event of her life, [redacted] was instead experiencing emotional distress, anxiety, and violations of her rights due to the actions of GHMC staff.
14. On March [redacted], 2021, [redacted], at 37 weeks pregnant, went to her obstetrician's office for a prenatal appointment. Because she was experiencing high blood pressure, her obstetrician told her to go to the hospital.
15. Prior to her admission at GHMC, she ate lunch. Wanting something healthy, she ate an entire bag (3.5 servings) of Sam's Club kale salad with poppy seed dressing.

16. At the time, [redacted] did not know that the ingestion of foods with poppy seeds can result in false positive drug tests for opioids. As she later learned, the amount of poppy seeds typically found in a bagel or other common foods can produce urine concentrations higher than the 300 ng/mL level just two hours post-consumption.[1] All GHMC staff who conduct drug tests and/or report the results of those tests to child welfare authorities knew or should have known of this common reason for false positives.
17. [redacted] arrived at the hospital later that day. Because she was concerned she might have a urinary tract infection (UTI), she requested a urine screen for a UTI.
18. The hospital never sought [redacted]'s informed consent to perform a toxicology screen of her urine for the presence of controlled substances. Despite this, GHMC staff conducted a drug toxicology screen on [redacted]'s urine.
19. GHMC had no medical necessity, reason, or justification to test [redacted]'s urine for drugs. Leading medical authorities, including the American College of Obstetricians and Gynecologists, reject screening pregnant people for substance use disorder via drug testing, noting, "False-positive test results can occur with immune-assay testing and legal consequences can be devastating to the patient and her family."[2]

---

[1] Kimberly L. Samano et al., *Concentrations of Morphine and Codeine in Paired Oral Fluid and Urine Specimens Following Ingestion of a Poppy Seed Roll and Raw Poppy Seeds,* 39(8) J. ANALYTICAL TOXICOL 655, 659 (Oct. 2015).

[2] American College of Obstetricians and Gynecologists, *ACOG Committee Opinion: Opioid Use and Opioid Use Disorder in Pregnancy* (reaffirmed Oct. 2021); *see also* American College of Obstetricians and Gynecologists, *ACOG Committee Opinion: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician–Gynecologist* (reaffirmed 2014) ("[T]esting and reporting puts the therapeutic relationship between the obstetrician–gynecologist and the patient at risk, potentially placing the physician in an adversarial relationship with the patient . . . . Drug

20. The lab results from the initial screening test indicated "presumptive positive" for opiates. The "presumptive positive" was solely due to ███████'s ingestion of a salad with poppy seed dressing earlier that day.

21. The initial screening form from GHMC's own laboratory provides:

> This test provides a *preliminary result only; positive results are unconfirmed. A more specific chemical method must be used for confirmation*. Clinical consideration and professional judgment should be applied to any drug of abuse test result, particularly when preliminary positive results are used. Confirmatory testing will be performed by request only when ordered within 48 hours of specimen receipt.

22. Expert medical associations agree that any positive screening result should be confirmed with a second, more accurate test.[3]

23. Yet after the test came back positive for opiates, GHMC failed to conduct a confirmatory test for days, despite the laboratory's own direction to obtain one, the consensus from medical associations, and the fact that ███████ and her family repeatedly requested confirmatory testing.

24. Instead, GHMC contacted the State Central Register of Child Abuse and Maltreatment ("State Central Register") to report the unconfirmed test result without ███████'s knowledge or consent.

---

enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus.").

[3] *See, e.g.*, Substance Abuse and Mental Health Services Administration, *Clinical Guidance for Treating Pregnant and Parenting Women with Opioid Use Disorder and Their Infants* (Jan. 2018).

25. GHMC did not request or obtain [redacted]'s consent to report the results of her urine drug test to third parties, including government agencies like the State Central Register or Child Protective Services ("CPS").

26. GHMC did not disclose to [redacted] that it would report an unconfirmed, false positive test result to the State Central Register or OCDSS even if her baby was born healthy, was not exposed to opiates, and tested negative for opiates.

27. A preliminary positive drug test result does not constitute suspicion of abuse or neglect. There is no state or federal statute or regulation that requires hospitals to report a single, unconfirmed, preliminary test to the State Central Register, much less a false positive test result.

28. GHMC never explored possible alternative causes for the unconfirmed, positive result before contacting the State Central Register.

29. GHMC's report to the State Central Register was shocking, not only because it was based on an unconfirmed test result, but also because GHMC uses a low threshold of 300 ng/mL to qualify as a positive result. At all times relevant, GHMC was aware, and/or knew or should have known, that its urine drug tests were unreliable and likely to lead to false positive results given that GHMC uses an extremely low "cut-off" to qualify as a positive result. GHMC's threshold of 300 ng/mL falls far below the threshold used by the federal government.[4]

---

[4] The U.S. Department of Health and Human Services raised its testing threshold from 300 ng/mL to 2,000 ng/mL for workplace screening to avoid false-positive results from poppy seeds. *See* Karen E. Moeller, PharmD, BCPP, et al., *Urine Drug Screening: Practical Guide for Clinicians*, Mayo Clin Proc. 2008;83(1)66-76 (noting that the U.S. Department of Health and Human Services (DHHS) adjusted its threshold to 2,000ng/mL "to help eliminate false-positive results (e.g., poppy seeds causing positive opium results).").

30. repeatedly pleaded with hospital staff to conduct a confirmatory test and record in her medical records that she consumed poppy seeds.
31. A nurse dismissed her request and incorrectly claimed that she would have had to consume “spoonfuls” of poppy seeds for the test result to be a false positive.
32. A nurse also dismissively told that the positive result was “no big deal” and that nothing would come of it if her baby tested negative.
33. On March , 2021, the day ’s baby was born, tested negative for opiates and all other substances.
34. ’s baby showed no signs of withdrawal or Neonatal Abstinence Syndrome (“NAS”).
35. GHMC nonetheless inaccurately wrote in the baby’s medical records that had “in utero drug exposure.”
36. Despite her baby’s negative test result and the fact that had no signs of withdrawal, the hospital informed that her baby had to stay at the hospital for an extra 24-48 hours so could be monitored. This was very distressing to who was eager to settle in at home with her new baby.
37. successfully breastfed her baby during the first two days of life—an experience that was extremely important to her as a new mother.
38. Yet on March , 2021, two days after delivery, a nurse observed breastfeeding and informed her that she was not permitted to do so and must formula feed her baby instead. This command devastated , who had

always planned to breastfeed her baby in light of the known health benefits of breastfeeding.[5]

39. This command also violated [redacted]'s rights under the New York Breastfeeding Mothers' Bill of Rights to "make [her] own choice about breastfeeding" and to have her health care provider "encourage and support breastfeeding."[6]

40. Because hospital staff had already called the State Central Register, it was made very apparent to [redacted] that if she did not comply, her baby would be taken away from her.

41. After the nurse consulted with a pediatrician on duty, the pediatrician came to speak with [redacted].

42. The pediatrician stated that even if [redacted] had consumed drugs (which she did not) and even if her baby displayed symptoms of withdrawal (which [redacted] did not), breastfeeding [redacted] would help to lessen the effects of withdrawal. The pediatrician's statement is supported by research finding that keeping a mother and baby in the same room ("rooming in"), skin-to-skin contact, and breastfeeding significantly reduce a newborn's hospital stay and need for medication.[7] The pediatrician stated, however, that the decision was not hers to

---

[5] *See* U.S. Dep't Health & Hum. Serv., *Breastfeeding: Surgeon General's Call to Action Fact Sheet*, https://www.hhs.gov/surgeongeneral/reports-and-publications/breastfeeding/factsheet/index.html (describing how breastfeeding protects babies from infections and illness, breastfed babies are less likely to develop asthma, breastfeeding reduces the risk of sudden infant death syndrome, and mothers who breastfeed have a decreased risk of breast and ovarian cancers).

[6] N.Y. Pub. Health Law § 2505-a.

[7] Ronald R. Abrahams et al., *An Evaluation of Rooming-In Among Substance-exposed Newborns in British Columbia*, 32 J. Obstet. Gynecol. Can. 866 (2010); Tolulope Saiki et al., *Neonatal Abstinence Syndrome - Postnatal Ward Versus Neonatal Unit Management*, 169 Eur. J. Peds. 95 (2010); Gabrielle K. Welle-Strand et al., *Breastfeeding Reduces the Need for Withdrawal Treatment in Opioid-Exposed Infants*, 102 Foundation Acta Paediatrica 1060 (2013).

make. The pediatrician and nurse said they would consult with additional hospital staff.

43. When the nurse returned, she once again told that she could not breastfeed. felt heartbroken and began to cry.

44. The nurse proceeded to tell that “children fall through the cracks,” that “it’s our job to protect at all costs,” and that “this is a way of protecting , so embrace it.”

45. The conversation was deeply distressing to due to the implication that she had put her baby at risk when, in fact, she had done no such thing. To the contrary, felt that the *hospital* was putting her baby at risk of harm by reporting her family to the State Central Register and by preventing her from breastfeeding. nonetheless continued to comply with the instructions of hospital staff.

46. When ’s mother arrived at the hospital, a nurse told her that should never have been permitted to breastfeed in the first instance and that breastfeeding must cease immediately.

47. continued to cry, and ’s mother demanded a second urine test to prove that the initial test was a false positive.

48. was finally given a second test, which came back negative.

49. Upon information and belief, GHMC refused to withdraw the State Central Register report despite the fact that the second test came back negative.

50. GHMC’s report to the State Central Register led CPS to open an intrusive child abuse and maltreatment investigation against .

51. While [REDACTED] was still in the hospital, a CPS case worker showed up at the home she shares with her mother to conduct a physical search. [REDACTED]'s mother understood that [REDACTED] and her baby would not be allowed to leave the hospital together unless she permitted the case worker to conduct the search. The case worker went through various rooms in the house, examined their physical belongings, and asked [REDACTED]'s mother intrusive questions about [REDACTED]. As the episode occurred during the COVID-19 pandemic, it was particularly distressing for [REDACTED] and her mother to have a stranger visit their home and examine their belongings.

52. Throughout her hospital stay, [REDACTED] felt terrified that her baby would be taken away from her even though she had done nothing wrong. [REDACTED] will never be able to get back the first few days of her baby's life, which should have been a joyous time.

53. The following day, in a March [REDACTED], 2021 conversation between [REDACTED]'s mother and [REDACTED], the Nursing Director of the Mother/Baby Unit, Ms. [REDACTED] admitted that [REDACTED] was improperly denied the right to breastfeed.

54. Ms. [REDACTED] also confirmed that [REDACTED] was not the first mother whom GHMC had wrongly reported to the State Central Register on the basis of a false positive test due to poppy seed consumption.

55. Indeed, [REDACTED] is aware of at least one other patient, [REDACTED], who was similarly drug tested without her consent, received a false positive due to poppy seed consumption, and was nonetheless reported to the State Central

Register. [REDACTED] has also filed a New York State Division of Human Rights complaint against GHMC.

56. After [REDACTED]'s discharge, she and her family repeatedly contacted GHMC to request that it remove the false and stigmatizing claims in her medical records and those of her baby, and to find out more information about GHMC's practice of drug testing perinatal patients without their consent and reporting unconfirmed positive results—including false ones—to the State Central Register.

57. Yet GHMC ignored [REDACTED]'s repeated requests for an amendment to her medical records and stymied her family's efforts to obtain further information, including hanging the phone up on her mother.

58. Once [REDACTED] was home from the hospital, she continued to grapple with the consequences of GHMC's report to the State Central Register. At the request of the CPS investigator, [REDACTED] submitted to further drug testing and once again tested negative.

59. CPS's investigation later determined that GHMC's report against [REDACTED] was unfounded. The investigative report states:

> The investigation found no evidence of substance abuse issues by [REDACTED] or any other family member. Collateral contact was made with the child's pediatrician who confirmed [REDACTED] has been thriving since birth and the parents are very attentive and caring. [REDACTED]'s prenatal medical records were also received and reviewed showing no evidence of substance abuse issues.

60. At all times relevant, GHMC was aware that when it reported the unconfirmed, false positive test to the State Central Register that CPS would in turn conduct a highly intrusive child abuse and maltreatment investigation.

61. subsequently obtained an additional 12-month hair follicle drug test, and once again tested negative.

62. In sum, GHMC staff treated in a discriminatory, accusatory, dismissive manner; reported her to the State Central Register on the basis of an unconfirmed, false positive test; repeatedly denied her requests for a confirmatory test that was required by GHMC's own laboratory report; denied her the opportunity to breastfeed; forced her to spend extra days at the hospital so her baby could be "monitored" despite the fact the baby tested negative, 's confirmatory test was negative, and the baby showed no signs of withdrawal; and forced her to submit to an intrusive abuse and neglect investigation as a result of the report to the State Central Register.

63. GHMC's actions have caused and her family members to experience significant and lasting emotional distress.

CLAIMS

64. Respondent GHMC's actions violate the New York State Human Rights Law, Executive Law § 296. Respondent GHMC's treatment of and practice of drug testing perinatal patients without their informed consent is unlawful sex and pregnancy discrimination.

65. Respondent GHMC has a medically unnecessary policy or practice of collecting and drug testing the urine of perinatal patients, and subsequently reporting unconfirmed false positive results to the State Central Register, but has no similar policy or practice of collecting and drug testing the urine of these patients' male

partners or other male patients who are fathers, and no similar policy or practice of reporting unconfirmed false positive results to the State Central Register.

66. Drug testing a perinatal person without their informed consent is not based upon medical necessity and thus constitutes discrimination on the basis of sex and pregnancy.

67. Complainant [redacted] has suffered substantial harm as a result of Respondent GHMC's actions, including but not limited to, emotional and psychological pain and suffering, embarrassment, and humiliation.

PRAYER FOR RELIEF

68. Complainant respectfully requests the following relief:

    a. Fully investigate [redacted]'s complaint and issue a finding that probable cause for unlawful discrimination occurred;

    b. Declare that Respondent's actions violate the New York State Human Rights Law, Executive Law § 296;

    c. Order Respondent to cease and desist its unlawful discriminatory practice of drug testing perinatal patients without their consent;

    d. Order Respondent to establish policies, procedures, and training relating to informed consent and pregnancy discrimination;

    e. Order Respondent to issue a letter of apology;

    f. Order Respondent to amend [redacted]'s medical records and those of her baby to remove any reference to the false positive drug test result;

    g. Award Complainant compensatory damages for mental and psychological pain and suffering;

h. Award Complainant costs and attorneys' fees; and

i. Grant such other relief as the Commissioner deems proper.

Dated: December 17, 2021
New York, NY

NATIONAL ADVOCATES FOR
PREGNANT WOMEN

Emma Roth
Dana Sussman
575 8th Avenue, 7th Fl
New York, NY 10018
(347) 502-6785
ejr@advocatesforpregnantwomen.org

Attorneys for Complainant