

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

EILENE McLARTY AND ERNESTINE JARAMILLO,
on behalf of themselves and ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs.

Case assigned to Ellenwood, Kathleen McGarry

v.

CASE NO.:D-101-CV-2020-01566

PRESBYTERIAN HEALTHCARE
SERVICES, INC.,

Defendant.

CLASS ACTION COMPLAINT FOR DAMAGES

PLAINTIFFS Eilene McLarty and Ernestine Jaramillo, for themselves and all others similarly situated (collectively, “Plaintiffs”), hereby bring this class action against Defendant Presbyterian Healthcare Services, Inc. (“Presbyterian”) for declaratory and injunctive relief and damages for Presbyterian’s violations of New Mexico’s Unfair Practices Act and Presbyterian’s fraud, intentional misrepresentation, and negligent misrepresentation. In support of their claims, Plaintiffs allege as follows:

NATURE OF THE ACTION

1. For several years beginning in 2013, Presbyterian had a single fulltime doctor—Dr. Guy Rosenschein (Rosenschein) —serving as its pediatric surgeon and pediatric urologist. Presbyterian is the largest non-profit, private health system in the State of New Mexico. Parents of children who needed surgery or urologic care were regularly referred to Rosenschein by doctors throughout the state; parents with Presbyterian insurance were virtually forced to see Rosenschein; and many parents chose Rosenschein on their own because Presbyterian held him out as a specialist in pediatric surgery and urology.

2. Rosenschein, however, was not eligible to perform pediatric surgery or pediatric urology services at Presbyterian or anywhere else in New Mexico. Foreign trained physicians, like Rosenschein, who received his medical training in France, cannot practice medicine in the United States unless they receive specific certifications and complete extensive residency programs. Surgery residency programs are at least five years, and the pediatric surgery subspecialty requires the completion of an additional two-year pediatric surgery fellowship. Urology residency programs are also at least five years.

3. Rosenschein did not complete either required residency—surgery or urology—or the pediatric fellowship. Given that lack of training, Rosenschein was not eligible for certification by the relevant American medical specialty boards.

4. Presbyterian nonetheless granted Rosenschein privileges in violation of its own rules, which allow privileges in general surgery and subspecialties such as pediatric surgery and pediatric urology to physicians who are certified by, or accepted for, examination by the relevant American medical specialty boards, are Fellows of a relevant American College, or who can present equivalent credentials.

5. Despite the inadequacies in Rosenschein’s training and licensing, Presbyterian advertised Rosenschein and otherwise held him out as a pediatric surgeon and pediatric urologist. He appeared as such on the hospital’s website, and was the sole fulltime doctor in the pediatric surgery clinic for many years. Presbyterian described Rosenschein, like its other doctors, as a “quality, board-certified” surgeon.

6. Presbyterian was aware of the significant deficiencies in Rosenschein’s training, having gone through an initial credentialing review and ongoing credentialing updates for Rosenschein. Those processes would necessarily have revealed that Rosenschein lacked years of

required training for pediatric surgeons and urologists. Rosenschein's medical training in his native France and subsequent work in the United States was not even remotely comparable to the training required by American medical boards or by Presbyterian's own policies. Nonetheless, Presbyterian deceptively and misleadingly broadcasted to the parents and children of New Mexico that it had a board-certified pediatric surgeon and urologist. This allowed Presbyterian to keep pediatric patients who needed general surgery or urologic services within the Presbyterian Health Plan and not refer them outside of the Presbyterian system for the services they needed.

7. All patients who were examined and/or treated by Rosenschein at Presbyterian, including Plaintiffs' children, are victims of Presbyterian's fraud and its unfair, deceptive and unconscionable practices. Presbyterian's misrepresentations led these parents to have their children treated by a physician who lacked the requisite experience and training to perform the pediatric services their children needed.

PARTIES

8. Plaintiff Eilene McLarty is a resident of the County of Santa Fe, State of New Mexico.

9. Plaintiff Ernestine Jaramillo is a resident of the County of Bernalillo, State of New Mexico.

10. Plaintiffs are parents and legal guardians of minors who received medical care and treatment from Rosenschein at facilities owned, operated, and/or managed by Presbyterian.

11. Presbyterian is a New Mexico non-profit corporation. Presbyterian has numerous facilities and engages in extensive business and provides extensive services in this District.

12. At all material times, agents, servants, medical staff members, and/or employees of Presbyterian were acting in the course and scope of their authority, agency, service, and/or employment for Presbyterian.

JURISDICTION

13. The matter in controversy exceeds the sum of twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs, penalties, and attorneys' fees.

14. Venue is proper in the District Court of Santa Fe County pursuant to NMSA 1978, § 38-3-1 because Plaintiff Eilene McLarty and many of the putative class members are residents of Santa Fe County, New Mexico.

15. All of the acts complained of herein occurred in the State of New Mexico.

16. Upon information and belief, all of the Class Members were residents of New Mexico at the time the acts complained of herein occurred, which is where the events giving rise to this action occurred.

17. This Court has jurisdiction over the parties and the subject matter pursuant to NMSA 1978, § 41-4-1, *et seq.* and NMSA 1978, § 57-12-1, *et seq.*, and Rule 1-023 NMRA.

STATEMENT OF FACTS

I. Rosenschein Lacked the Training and Certifications to Practice Pediatric Surgery or Pediatric Urology at Presbyterian

18. Rosenschein's initial medical training occurred at various hospitals in France. Physicians trained in foreign countries cannot practice medicine in the United States unless they obtain certification from the Educational Commission for Foreign Medical Graduates ("ECFMG") and complete a residency training program accredited by the Accreditation Council for Graduate Medical Education ("ACGME") or the Royal College of Physicians and Surgeons of Canada ("RCPSC"). These requirements apply regardless of the doctor's overseas training.

<https://www.ama-assn.org/education/international-medical-education/practicing-medicine-us-international-medical-graduate/>.

19. General surgery residency programs are a minimum of five years, and the pediatric surgery subspecialty requires physicians to complete a five-year general surgery residency in addition to two years of full-time education in an approved pediatric surgery fellowship program. <https://www.facs.org/education/resources/medical-students/faq/training>. A urology residency is at least five years. <https://www.facs.org/education/resources/residency-search/specialties/urology>.

20. Rosenschein did not complete a general surgery residency in the United States or Canada. Rosenschein did not complete a pediatric surgery fellowship program in the United States or Canada. Rosenschein did not complete a urology residency in the United States or Canada. Rosenschein did not complete a pediatric urology program approved by the ACGME or the RCPSC.

21. The training Rosenschein purportedly completed in France is not accredited by the ACGME or the RCPSC. See <https://www.acgme.org>. Thus, Rosenschein was ineligible to provide pediatric surgery or pediatric urology services in the United States.

II. Presbyterian Violated Its Own Rules and Regulations When It Granted Rosenschein Staff Privileges

22. Presbyterian initially hired Rosenschein as a *locum tenens* pediatric surgeon on November 26, 2012 and on May 26, 2013 Presbyterian hired him as a full-time staff member. Until November 9, 2016, when Presbyterian terminated Rosenschein in the wake of his arrest for possession and distribution of child pornography, Rosenschein was an employee and staff physician at Presbyterian and performed pediatric surgery and provided pediatric urology

services at Presbyterian facilities, including as the sole full-time doctor in Presbyterian's pediatric surgery clinic at its main hospital facility.

23. According to Presbyterian's Rules and Regulations of the Medical and Dental Staff, Section VII, subs. M. & O, privileges in general surgery, surgical specialties such as pediatric surgery, and pediatric urology "shall be granted only to those physicians/dentists who are certified by, or accepted for examination by the appropriate American specialty board, Fellow of appropriate American College, or to those who can present credentials which are the equivalent of the foregoing as judged by the appropriate Divisional or sectional committee."

24. Rosenschein was not Board certified by any American specialty board, and was not Board eligible by virtue of completing a required ACGME-accredited residency or fellowship program nor an accredited international residency or fellowship program approved by the RCPSC. And, his credentials were not equivalent to required residencies and fellowship.

25. Presbyterian was aware that Rosenschein did not complete any residency or fellowship program accredited by the ACGME or the RCPSC that would have permitted him to provide surgery, pediatric surgery, and/or pediatric urology services at Presbyterian.

26. As of 2020, more than 26 percent of Presbyterian's physicians graduated from foreign medical schools. Of those physicians, *all* completed residency programs in the United States or Canada, and more than 65% of these physicians are Board certified in at least one specialty. If Rosenschein were still employed by Presbyterian today, he would be the *only* foreign medical graduate employed by Presbyterian who did not complete a residency program in the United States or Canada or one approved by the ACGME or the RCPSC.

III. Presbyterian Misrepresented Rosenschein's Medical Training

27. Presbyterian advertised Rosenschein as a pediatric surgeon and pediatric urologist and made explicit and implicit representations to the public that he possessed the requisite medical and surgical training and credentials recognized by the American Medical Association and other medical associations and organizations to provide those specialized medical and surgical services to patients.

28. Rosenschein was listed by Presbyterian as being a specialist in pediatric surgery and pediatric urology. A search for a pediatric surgeon or a pediatric urologist in Presbyterian's medical provider directory would bring up Rosenschein's name.

29. Presbyterian falsely represented that Rosenschein was a "quality," "board-certified" pediatric surgeon and as a corollary that he had completed extensive residency and fellowship programs. Rosenschein had not, in fact, completed the requisite residencies or fellowship programs in the United States or Canada, an ACGME-accredited residency and fellowship program, or an accredited international residency or fellowship program approved by the RCPSC that rendered him eligible to provide pediatric surgery and urology services in the United States or at Presbyterian.

IV. Rosenschein Performed Pediatric Surgeries and/or Provided Pediatric Urology Services for the Lead Plaintiffs' Children

30. Plaintiff Eilene McLarty reasonably relied on Presbyterian's false representations that Rosenschein possessed the requisite credentials to perform pediatric surgery.

31. Ms. McLarty and her husband first heard Rosenschein's name when they called Presbyterian trying to reach the pediatric surgeon who had seen their daughter in 2010. They were told by an agent of Presbyterian that their former doctor had retired, and that the new pediatric surgeon was Rosenschein. Ms. McLarty explained that her four-year-old daughter

needed medical services, specifically surgery. She was told that Rosenschein could perform the surgery her daughter needed. She was not given the option of seeing any other doctor.

32. Ms. McLarty and her husband went to Presbyterian to meet with Rosenschein in advance of their daughter's procedure. They entered through the main hospital doors, proceeded to the pediatric clinic on the fourth floor, and checked in at the front desk. They then proceeded to Rosenschein's office, where he was wearing a badge identifying himself a pediatric surgeon.

33. Placing her trust in both Presbyterian and Rosenschein, whom she reasonably believed was eligible to perform pediatric surgery, Ms. McLarty and her husband allowed their four-year-old daughter to receive medical treatment and services from Rosenschein in November 2014 and January 2015.

34. Even though Rosenschein was not eligible to perform pediatric surgery or pediatric urology at Presbyterian's hospital, Presbyterian (1) permitted Rosenschein to physically examine and evaluate Ms. McLarty's daughter and perform a surgical umbilical hernia repair on her; and (2) charged Ms. McLarty for Rosenschein's services, as well as all expenses and costs relating to the surgery.

35. Had Ms. McLarty and her husband known that Rosenschein was not eligible to perform pediatric surgery, they would not have agreed to allow Rosenschein to perform medical services on their daughter. They trusted that physicians employed by Presbyterian were properly qualified, certified, and eligible to perform the medical services that Presbyterian described they could perform. If they had known the truth, they would have taken their daughter to the University of New Mexico Hospital.

36. Plaintiff Ernestine Jaramillo reasonably relied on Presbyterian's false representations that Rosenschein possessed the requisite credentials to perform pediatric surgery and urology at Presbyterian.

37. Ms. Jaramillo first heard Rosenschein's name when she called her insurance provider for a referral to a qualified urologist for her fourteen-year-old son. Ms. Jaramillo was told by a Presbyterian representative that Rosenschein was a qualified urologist. She was afraid about her son's surgery, so she asked the representative on the phone if Rosenschein was a good surgeon. She was told that he was, and that Presbyterian only hired qualified doctors. She then set up an appointment with Rosenschein.

38. On the day of the appointment, Ernestine Jaramillo and her son went to Rosenschein's office in the pediatric surgery clinic. When she arrived, she saw that his name was on the door, and that he was wearing a Presbyterian badge, identifying him as a doctor.

39. Placing her trust in both Presbyterian and Rosenschein, whom she reasonably believed was eligible to perform pediatric surgery, Plaintiff Ernestine Jaramillo allowed her son to receive medical treatment and services from Rosenschein in September 2016.

40. Even though Rosenschein was not eligible to perform pediatric surgery or pediatric urology at Presbyterian's hospital, Presbyterian (1) permitted Rosenschein to physically examine and evaluate Ms. Jaramillo's son and perform an exploratory cystostomy on him; and (2) charged Plaintiff Ernestine Jaramillo for Rosenschein's services, as well as all expenses and costs relating to the surgery.

41. Had Ernestine Jaramillo known that Rosenschein was not eligible to perform pediatric surgery, she would not have agreed to allow Rosenschein to perform medical services on her son. She chose Presbyterian through Medicaid, because it was supposed to be the best

hospital with the most qualified doctors. If she had known the truth, she would never have chosen to see Rosenschein at Presbyterian.

42. All Plaintiffs were victims of Presbyterian's false statements and misrepresentations suggesting that Rosenschein's medical and surgical training rendered him eligible to perform pediatric surgeries and provide pediatric urology services for their children, and they reasonably relied on Presbyterian's false promises and misrepresentations when they permitted their children to receive such services from Rosenschein to their financial detriment.

43. Plaintiffs reasonably relied on Presbyterian's representations and assurances that its doctors generally, and Rosenschein specifically, were qualified. Plaintiffs did not know, nor did they have any reason to know that Presbyterian's representations about Rosenschein were false. Until Plaintiffs became aware that Rosenschein had been arrested, they had no reason to question whether Presbyterian had made misrepresentations to them. Prior to that point, no reasonable person, in their position, would have questioned the representations made by Presbyterian, the largest non-profit, private health system in the State of New Mexico.

CLASS ALLEGATIONS

44. Plaintiffs bring this Complaint as a class action pursuant to Rules 1-023(a), (b)(2), (b)(3) and/or (c)(4).

45. Plaintiffs bring and prosecute this action pursuant to Rule 1-023 as a class action for themselves and as representatives of, and on behalf of, the following Class:

All parents or guardians who arranged and/or paid in any manner for a minor child to be examined, cared for, or treated by Rosenschein during his tenure at Presbyterian as an employed doctor or *locum tenens*.

Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

46. On information and belief, the Class Members total in the thousands. Plaintiffs are aware of more than 3,000 children who were examined, cared for, and treated by Rosenschein during his tenure at Presbyterian, meaning that the number of parents or guardians of these children would be similarly numerous. Joinder of all, or even a majority of, the Class herein is impracticable, if not impossible. The exact size of the Class and the identities of the individual members are ascertainable through records maintained by Presbyterian. However, due to the number of patients seen by Rosenschein, the number of Class Members would clearly exceed the number required for numerosity, even without the benefit of Presbyterian's records.

47. There are questions of law and fact common to the Class, including, but not limited to, the following:

(a) Whether Rosenschein lacked the necessary medical training to perform pediatric surgery in the United States;

(b) Whether Rosenschein lacked the necessary medical training to provide pediatric urology services in the United States;

(c) Whether Presbyterian had knowledge that Rosenschein lacked the necessary medical training to perform pediatric surgery in the United States;

(d) Whether Presbyterian had knowledge that Rosenschein lacked the necessary medical training to provide pediatric urology services in the United States;

(e) Whether Presbyterian credentialed and extended staff privileges to Rosenschein even though Rosenschein lacked the necessary medical training to perform pediatric surgery in the United States;

(f) Whether Presbyterian credentialed and extended staff privileges to Rosenschein even though Rosenschein lacked the necessary medical training to provide pediatric urology services in the United States;

(g) Whether Presbyterian facilitated Rosenschein in performing surgery and providing pediatric urology services for pediatric patients;

(h) Whether Presbyterian misrepresented Rosenschein's medical training to the public; and

(i) What system is used by Presbyterian to maintain records of all billings for a physician's purported care.

48. Plaintiffs' claims are typical of those of the Class Members because Plaintiffs and the other Class Members all arranged and/or paid for a minor child to be treated by Rosenschein, who did not have the requisite qualifications to treat the minor children of all Class Members, but about whom Presbyterian made uniform misrepresentations.

49. Plaintiffs will fairly and adequately represent and pursue the interests of the Class. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class Members. Plaintiffs do not have any interests that conflict with or are antagonistic to the interests of the Class Members. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class Members. Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action.

50. Presbyterian has acted or refused to act on grounds generally applicable to the class.

51. The common questions of law and fact set forth herein predominate over questions only affecting individual members of the class. To the extent that there exist any individualized questions, they are dwarfed by the common factual and legal questions and certification under 1-023(b)(3) is appropriate.

52. A class action is superior to other available methods for fairly and efficiently adjudicating this litigation. The class action mechanism provides a single forum to litigate hundreds of claims arising out of the same conduct by Presbyterian. Requiring that individual suits proceed would result in protracted litigation for, potentially, decades. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There should be no difficulty in the management of this action as a class action. Any hypothetical difficulty that could be encountered in the management of a class action in this litigation are insignificant, especially when weighed against the virtual impossibility of affording adequate relief to the individuals through potentially thousands of separate actions.

CAUSES OF ACTION

COUNT I

New Mexico's Unfair Practices Act NMSA 1978, § 57-12-1, *et seq.*

53. Plaintiffs reallege and incorporate by reference all of the allegations set forth in Paragraphs 1 through 52 above.

54. Presbyterian is a "person" as defined by the New Mexico Unfair Practices Act (the "UPA"), NMSA 1978, § 57-12-2(A), engaged in trade or commerce as defined by NMSA 1978, § 57-12-2(C).

55. Presbyterian publicly advertised and included information on its website promising the public, including Plaintiffs, that physicians practicing medicine at its hospitals and facilities in New Mexico were properly eligible to practice medicine and had the requisite credentials to provide medical services in their specialties or subspecialties.

56. Presbyterian specifically informed the public, including Plaintiffs, that “its board certified pediatric surgeons” provided “quality care” to pediatric patients.

57. Presbyterian made these representations in its regular course of business.

58. These representations were false, deceptive, and misleading because Rosenschein was not board certified nor board-eligible in any medical or surgical specialty or subspecialty, and lacked the requisite training to perform pediatric surgery and provide pediatric urology services for patients, including Plaintiffs’ children.

59. Presbyterian knew, or in the exercise of reasonable diligence should have been aware, that its representations were false as to Rosenschein, given that it was aware of his lack of training and qualifications.

60. When Presbyterian held Rosenschein out as a qualified physician, it resulted in fundamental unfairness and frustration of purpose for Plaintiffs seeking quality medical care for their children because Rosenschein was not qualified to provide the needed medical services. Further, given the relative bargaining strength, sophistication, and ability to accept or decline medical services between Presbyterian and Plaintiffs—who would not be expected to have any medical background, and who needed medical services for their children—Presbyterian’s actions were unconscionable.

61. By and through the acts described above, Presbyterian has engaged in unfair, deceptive and/or unconscionable trade practices as defined by NMSA 1978, §§ 57-12-2(D)(2), (5), (7), and (17) and § 57-12-2(E), in violation of the UPA, § 57-12-1, *et seq.*

62. As a result of Presbyterian's acts, Plaintiffs' children were examined and treated by Rosenschein, a physician who lacked the requisite medical training to provide the medical and surgical services they received and paid for.

63. As a further direct and proximate cause of Presbyterian's acts, Plaintiffs incurred medical and related expenses from Rosenschein's treatment.

64. Presbyterian acted willfully when it deliberately disregarded the risks posed by Rosenschein and engaged in the unfair, deceptive, and unconscionable trade practices described above. As such, Plaintiffs are entitled to recover additional damages in an amount up to three times their actual damages under NMSA 1978, § 57-12-10(B).

65. Plaintiffs are entitled to recover their attorneys' fees and reasonable costs under NMSA 1978, § 57-12-10(C).

66. Presbyterian's deceptive, unfair, and unconscionable acts as set forth above were committed by Presbyterian through its employees, agents, representatives, officers, directors and/or designees, and/or were ratified and/or acquiesced to by Presbyterian through its agents, employees, representatives, officers, directors and/or designees while serving in a managerial capacity.

COUNT II

Fraud/Intentional Misrepresentation

67. Plaintiffs reallege and incorporate by reference all of the allegations set forth in Paragraphs 1 through 66 above.

68. Presbyterian misrepresented to the public, including Plaintiffs, that Rosenschein possessed the requisite medical training, including the completion of accredited residency and fellowship programs, required and approved by American medical boards, associations, and organizations, to perform pediatric surgery and provide pediatric urology services to children.

69. Presbyterian also misrepresented to the public, including Plaintiffs, that Rosenschein was a “quality,” “board-certified” pediatric surgeon and pediatric urologist.

70. Presbyterian made these misrepresentations knowingly, or in reckless disregard to the fact that they were false and misleading, given that it was aware of Rosenschein’s lack of qualifications and training.

71. Presbyterian made the misrepresentations to induce people to have their minor children examined and treated by Rosenschein.

72. Plaintiffs justifiably relied on Presbyterian’s misrepresentations and allowed their minor children to be examined and treated by Rosenschein, even though they could have sought pediatric surgery and pediatric urology services elsewhere by physicians who, unlike Rosenschein, possessed the requisite medical training.

73. Plaintiffs have been substantially harmed by Presbyterian’s misrepresentations because their minor children were examined and treated by Rosenschein, a physician who lacked the requisite medical training to perform pediatric surgery and/or pediatric urology services, and charged for such services, all to their financial detriment.

74. As a result of Presbyterian’s fraud and intentional misrepresentations, Plaintiffs have suffered monetary damages.

75. In doing the acts alleged, Presbyterian's conduct was malicious, fraudulent, oppressive, or otherwise committed recklessly with a wanton disregard for Plaintiffs, entitling Plaintiffs to receive punitive damages.

COUNT III

Negligent Misrepresentation

76. Plaintiffs reallege and incorporate by reference all of the allegations set forth in Paragraphs 1 through 75 above.

77. Presbyterian represented to the public, including Plaintiffs, that Rosenschein possessed the medical training, including the completion of accredited residency and fellowship programs, required and approved by American medical boards, associations, and organizations, to perform pediatric surgery and provide pediatric urology services to its pediatric patients.

78. Presbyterian also represented to the public, including Plaintiffs, that Rosenschein was a "quality," "board-certified" pediatric surgeon and pediatric urologist.

79. These representations are material to a decision to obtain medical care for one's child.

80. Plaintiffs justifiably relied on Presbyterian's representations and allowed their minor children to be examined and treated by Rosenschein, even though they could have sought pediatric surgery and pediatric urology services elsewhere by physicians who, unlike Rosenschein, possessed the requisite medical training.

81. Presbyterian made these representations knowing they were false or misleading, or in reckless disregard to the fact that they were false and misleading, given that it was aware of Rosenschein's lack of qualifications and training.

82. Presbyterian made the representations to induce people to allow their minor children to be examined and treated by Rosenschein.

83. Presbyterian had a duty to properly investigate, credential, qualify, select, and retain only competent physicians and surgeons who are eligible to practice the medicine and/or surgery that they practice at Presbyterian. Moreover, Presbyterian had a duty, under applicable standards of medical practice and common law, to promulgate proper and effective standards, procedures, protocols, systems, and rules to ensure its physicians and surgeons are eligible to practice the medicine and/or surgery that they practice at Presbyterian. Further, Presbyterian had a duty to present accurate information to the public with regard to its medical services.

84. Plaintiffs and the Class Members have been substantially harmed by Presbyterian's negligent misrepresentations because their minor children were examined and treated by Rosenschein, a physician who lacked the requisite medical training to perform pediatric surgery and/or pediatric urology services, and charged for such services, all to their financial detriment.

85. As a result of Presbyterian's negligent misrepresentations, Plaintiffs have suffered monetary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Eilene McLarty and Ernestine Jaramillo for themselves and all others similarly situated, pray that this Court:

- (a) Certify the Class, name Eilene McLarty and Ernestine Jaramillo as representatives of the Class, and appoint their lawyers as Class Counsel;
- (b) Enter judgment against Defendant Presbyterian Healthcare Services, Inc. in favor of Plaintiffs;
- (c) Award Plaintiffs compensatory damages;
- (d) Award punitive damages;

- (e) Award the costs and expenses of this case, including attorneys' fees;
- (f) Award treble damages under the UPA;
- (g) Award pre-judgment and post-judgment interest;
- (h) Allow trial by jury; and
- (i) Award all other further and general relief as the Court deems just and proper.

Respectfully submitted,

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