

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. _____

Kaitlin K [REDACTED])
)
Complainant,)
)
v.)
)
Virtua Voorhees Hospital,)
)
Respondent.)

Administrative Action

ADMINISTRATIVE COMPLAINT

INTRODUCTION

1. On October 20, 2022, Kaitlin K [REDACTED] went to Virtua Voorhees Hospital (“VVH”) to deliver her second child.
2. Unbeknownst to Kaitlin, her breakfast that morning – a bagel with poppy seeds – would play a role in one of the most traumatic experiences of her life.
3. Upon admission to labor and delivery, VVH collected Kaitlin’s urine to perform a drug test without her knowledge or consent. VVH conducted the test only because Kaitlin was pregnant, even though there was no medical necessity or justification for testing Kaitlin specifically or perinatal patients generally.
4. Because she had consumed poppy seeds earlier that day, Kaitlin’s urine returned positive for opiates.
5. On the basis of these results, and despite the fact that tests performed on her newborn were negative for opiates and other substances, VVH, following their internal protocol, contacted the New Jersey Division of Child Protection and Permanency (“DCPP”) to report Kaitlin for possible child abuse and neglect.
6. VVH has a practice of drug testing perinatal patients on the basis of sex and pregnancy in violation of New Jersey’s Law Against Discrimination.
7. As a direct result of this practice, what should have been a joyous experience for Kaitlin and her family caused serious and lasting emotional trauma.
8. Kaitlin files this complaint to ensure that Virtua Voorhees Hospital ceases its unlawful discriminatory practice of subjecting perinatal patients to drug tests without their specific, informed consent and in the absence of medical necessity, and institutes amended

policies, procedures, and training regarding drug testing, accordingly. Kaitlin also seeks a declaration that the hospital's actions were unlawful, and requests compensatory damages.

PARTIES

9. Complainant Kaitlin K [REDACTED] is an adult resident of [REDACTED] New Jersey, and the mother of M., her child born on October 20, 2022, at Virtua Voorhees Hospital.
10. Respondent Virtua Voorhees Hospital is a not-for-profit corporation under the Virtua Health network of hospitals. VVH's principal place of business is located at 100 Bowman Drive, Voorhees, NJ 08043 in Camden County. Respondent VVH was, at all relevant times, acting by and through its duly authorized agents, employees, and/or assigns, who were acting within the course and scope of their employment in accordance with the customs, policies, and practices of VVH. VVH is a place of public accommodation as defined by N.J.S.A. 10:5-5(l).

FACTS

11. Kaitlin was thrilled to discover in early 2022 that she was expecting another child. Her older son, F., was also excited to become a big brother.
12. Throughout the duration of her pregnancy, Kaitlin sought out and received necessary and appropriate prenatal medical care.
13. At many of her prenatal medical appointments, Kaitlin's doctors took a urine sample to test for various conditions or nutritional imbalances that could potentially affect her pregnancy. Kaitlin was accustomed to providing urine samples during obstetrics and gynecology ("OB/GYN") appointments, which she understood were used to measure proteins in her urine. She was never advised that they were used for drug testing purposes.
14. On Thursday, October 20, 2022, Kaitlin went about her normal morning routine. She ate a bagel – containing poppy seeds – for breakfast, and prepared her son for school.
15. Kaitlin believed her water may have broken, so she called her doctor who advised her to go to the hospital. Kaitlin's friend drove her to VVH and stayed with her during the admissions process.
16. Kaitlin suffers from hearing loss and often has to ask people to repeat themselves when they speak to her, including doctors. As a result, Kaitlin had a difficult time hearing the VVH employee walking her through the hospital admission. She often had to ask her friend to repeat the question loudly for her or to answer on her behalf. During the admission process, Kaitlin and her friend sat on the other side of a plastic partition from a masked VVH employee completing the necessary paperwork, which made it more difficult for Kaitlin to clearly hear.
17. During the triage and admission process, a nurse handed Kaitlin a plastic cup and ordered her to provide a urine sample. Kaitlin went to the bathroom – which Kaitlin shared with another room – and placed her sample on the counter when she was done.

18. Neither the nurse nor anyone else explained the purpose for the sample nor what VVH would do with it. As with the routine samples she provided to her doctor, Kaitlin assumed that the purpose of this sample was for routine protein testing.
19. However, unbeknownst to her, VVH performed a drug test on Kaitlin's urine sample.¹
20. Upon information and belief, VVH routinely performs drug tests on urine samples from perinatal patients without the patients' knowledge or specific, informed consent.
21. VVH has no medical necessity, reason, or justification for performing drug tests on perinatal patients. Leading authorities in the field of gynecology and obstetrics, including the American College of Obstetricians and Gynecologists ("ACOG"), reject the practice of drug testing perinatal patients due to the potential for false positives and devastating legal consequences for patients, among other reasons.²

¹ While Kaitlin's medical records indicate that a nurse obtained verbal consent during the admissions process to conduct a urine drug test, neither Kaitlin nor her friend accompanying her recall discussing a drug test with anyone at the hospital.

² Leading medical organizations widely oppose drug testing perinatal patients. ACOG rejects the practice of screening pregnant people for substance abuse disorders through drug testing. *See ACOG Committee Opinion: Opioid Use and Opioid Use Disorder in Pregnancy*, AM. COLL. OBSTETRICIANS AND GYNECOLOGISTS (reaffirmed Oct. 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy>. Not only are false-positive test results possible, but "[a] positive drug test result is not in itself diagnostic of opioid use disorder." *Id.* Empirical evidence shows that the utility of maternal drug testing in identifying newborns suffering withdrawal is limited; given rates of discordant results between newborns and the birthing parent as well as the prevalence of false positives, urine drug test results "should always be interpreted with caution and clinicians are encouraged to be mindful of the clinical care context." Katrina Mark et. al., *Concordance and discordance between maternal newborn drug test results*, 3 AM. J. OBSTETRICS AND GYNECOLOGY MATERNAL-FETAL MEDICINE 100366 (July 2021), [https://www.ajogmf.com/article/S2589-9333\(21\)00061-6/pdf](https://www.ajogmf.com/article/S2589-9333(21)00061-6/pdf) ("The negative predictive value of maternal urine drug testing is higher than the positive predictive value, even after correcting for medications administered and sequence of testing."). Consequently, "ACOG recommends testing be performed only with the patient's consent and a positive test not be a deterrent to care, a disqualifier for coverage under publicly-funded programs, or the sole factor in determining family separation." *Substance Use Disorder in Pregnancy*, AM. COLL. OBSTETRICIANS AND GYNECOLOGISTS, <https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy> (last visited Feb. 7, 2023). Furthermore, testing and reporting to child protective services are more commonly targeted toward patients of color. *See, e.g., Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period*, AM. COLL. OBSTETRICIANS AND GYNECOLOGISTS (Dec. 2021), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period> (opposing mandated drug testing, particularly without patient consent); Katharine McCabe, *Criminalization of Care: Drug Testing Pregnant Patients*, 63 J. HEALTH AND SOCIAL BEHAVIOR 162 (Nov. 2021),

22. Upon information and belief, VVH does not inform perinatal patients of the tests that will be performed on their samples nor how the hospital will use or share the results of the tests. The hospital does not provide perinatal patients the opportunity to opt out of drug tests.
23. VVH's failure to provide perinatal patients with an opportunity to provide specific, informed consent also runs counter to the standard of care and recommendations of leading medical authorities, including ACOG.³
24. VVH tested Kaitlin's urine sample at a laboratory within the hospital on the afternoon of October 20 and received results by early afternoon on the same day.⁴ The test reported "positive" for opiates.
25. While Kaitlin waited in her hospital room for her contractions to start, she received a notification on her phone that she had a new test result on her MyChart – a software used by VVH to share information with patients. Kaitlin opened the new test result, which indicated that a drug test performed on her had returned positive for opiates.
26. Kaitlin showed the test result to her sister-in-law, who was keeping Kaitlin company in her hospital room. They were both confused. Kaitlin thought it could be a mistake as she never thought she was providing a sample for a drug test, and no one at the hospital talked with her about the need for one.
27. No one from the hospital staff spoke with Kaitlin about the test that day, so she believed the results must have been in error.
28. That afternoon, Kaitlin's contractions started. Kaitlin labored for just over an hour. Even before the doctors could administer an epidural, Kaitlin gave birth to M. – a nine-pound baby boy.
29. At the time of his birth, M. had low blood sugar – a common occurrence for larger newborns. Kaitlin worked with the hospital staff to supplement his feeding with formula to ensure he received the care he needed.
30. Once M.'s blood sugar stabilized, the doctors reported to Kaitlin that M. was a healthy, happy baby. He was sleeping and eating well. Baby M. never showed signs of withdrawal

<https://journals.sagepub.com/doi/full/10.1177/00221465211058152> (“Race, class, gender, and other patient traits...were salient in providers’ accounts of how patients were selected for testing or shielded from suspicion.”).

³ ACOG advises that, “[b]efore performing any test on the pregnant individual or neonate, including screening for the presence of illicit substances, informed consent should be obtained from the pregnant person or parent.” *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period*, AM. COLL. OBSTETRICIANS AND GYNECOLOGISTS (Dec. 2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>.

⁴ Kaitlin's medical records note that the sample was “collected” at 10:35am and the drug tests “resulted” at 12:41pm on October 20.

and was never diagnosed with neonatal opioid withdrawal syndrome or neonatal abstinence syndrome.

31. M. remained in the room with his mother. Kaitlin spent the next day admiring and caring for her adorable newborn child in her hospital room.
32. The next day, on October 21, a nurse entered Kaitlin's room in the early afternoon. For the first time, a hospital employee and medical professional told Kaitlin her drug test had come back positive for opiates, a full day after the hospital received the test results.
33. Although she had seen the result through MyChart the previous day, Kaitlin remained confused; not only did she not know that she had been drug tested, but she also did not understand how her urine could have returned positive for opiates.
34. The nurse asked if Kaitlin could have consumed anything prior to the urine test that may cause a false positive. Kaitlin suggested the poppy seeds in her bagel to the nurse, explaining that she had eaten an everything bagel the morning she came to the hospital. The nurse agreed that the poppy seeds could have caused this positive test result.⁵
35. The nurse went on to explain that because of the test results, the hospital would send Kaitlin's original sample, as well as urine and meconium samples from M., for further testing. The nurse suggested that this second test would provide more detailed information and would determine whether poppy seeds caused the positive result.
36. That afternoon, a case worker from the hospital visited Kaitlin in her room and explained that if the second test came back positive, the hospital would have to contact the Department on Child Protection and Permanency ("DCPP") to report Kaitlin for possible abuse of her child.
37. Kaitlin was immediately stressed by this new obstacle and intimidated by the fact that a case worker was visiting her. However, Kaitlin was sure this second test would come back negative and she would be able to bring her baby home the next day. She did not think she had reason to worry; she had nothing to hide.

⁵ The amount of poppy seeds found on a roll, a bagel, or other common foods can produce opiate concentrations in the urine that measure hundreds or thousands of nanograms per milliliter, even hours after consumption. See DEP'T HEALTH AND HUM. SERV. & SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN., *Medical Review Officer Guidance Manual for Federal Workplace Drug Testing Programs*, at 5-8 (Mar. 2018), https://www.samhsa.gov/sites/default/files/workplace/mro_guidance_manual_508_final_march_2018.pdf ("Eating a normal dietary amount of poppy seeds can cause a urine specimen to test positive for morphine and codeine."); 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 J. ANALYTICAL TOXICOL. 655, 659 (Oct. 2015), <https://academic.oup.com/jat/article/39/8/655/915592>.

38. The next morning, on Saturday, October 22, a staff member from the hospital informed Kaitlin that while M.'s tests had all been negative, the second test conducted on Kaitlin's urine sample had come back positive.
39. Based on this positive test result, the staff member informed Kaitlin that the hospital had to report her to DCPD.
40. No one explained the details of the test results to Kaitlin at the time, but Kaitlin later learned that the second test conducted on her urine sample reported a finding of 18 nanograms of codeine per milliliter of the sample (18 ng/mL). The laboratory testing Kaitlin's sample employed a cutoff of 10 ng/mL to determine whether a sample was positive for codeine, a testing cutoff level that is dramatically lower than recommended in Federal guidelines.⁶
41. Kaitlin could not believe this was happening. She did not understand how the test could have been positive for codeine. Kaitlin thought about how her urine had sat in the shared bathroom before the nurse retrieved it; she was sure her urine sample had been swapped.
42. Kaitlin and her baby were supposed to be discharged from the hospital around noon. However, VVH would not let them leave until DCPD arrived.
43. Kaitlin paced her hospital room, terrified that her child would be taken from her. She could not sit down or stay still. She felt confused, anxious, and as if she was being audited as a mom. Her family members assured Kaitlin that it would all be okay once she spoke with DCPD, but Kaitlin could not believe them; she had trusted the process before this point, and now she was unable to leave, and vulnerable to the judgments of a state agency with the power to remove her child. She was living a nightmare.
44. Hours later, representatives from DCPD arrived at the hospital to interview Kaitlin and her sister-in-law. Kaitlin was scared to speak with them – while she knew she did not do anything wrong, she also knew these people had the authority to take her children away.
45. Before Kaitlin could go home, DCPD informed her that they had to conduct a search of her home and interview her older child, F., who is only seven years old. DCPD representatives arrived at Kaitlin's apartment in the afternoon and conducted a walk-through of Kaitlin's home.

⁶ The Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine require testers to use a cutoff value of 2,000 ng/mL to identify positive test results for codeine. *Mandatory Guidelines for Federal Workplace Drug Testing Programs*, 82 FED. REG. 7,920, 7,941 (Jan. 23, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-01-23/pdf/2017-00979.pdf>. This cutoff value is 200 times the cutoff value employed by VVH. In fact, the federal government raised the cutoff for opiates from 300 ng/mL to 2,000 ng/mL in 1998 to address the concern that foods containing poppy seeds can cause a positive test result. *Mandatory Guidelines for Federal Workplace Drug Testing Programs*, 62 FED. REG. 51,118, 51,118 (Sep. 30, 1997), <http://www.gpo.gov/fdsys/pkg/FR-1997-09-30/pdf/97-25823.pdf>.

46. The DCPP representatives conducting the home visit also took F. aside to interview him alone. Kaitlin's friend, who was taking care of F. while Kaitlin was in the hospital, did not want him to be scared of the interview. She told the seven-year-old that a nurse was going to ask him some questions about his mommy and his home, explaining that it was something hospitals did before a new baby came home.
47. Kaitlin and M. were finally permitted to leave VVH in the evening on October 22 and returned home.
48. Over the next two months, Kaitlin continued to be subject to a full investigation by DCPP as a result of VVH's report to the Division.
49. DCPP representatives visited Kaitlin's home a second time on October 25, conducted another inspection, and again interviewed F. alone.
50. While they were at her home, the case workers gave Kaitlin pamphlets about how to properly care for children and lectured her on how to keep kids safe. Kaitlin felt insulted. She took pride in being a loving, responsible parent to her children and a reliable aunt and babysitter for friends and family.
51. The DCPP caseworkers asked Kaitlin whether she would be willing to provide a hair follicle sample for additional drug testing. Kaitlin was willing to provide whatever she needed to end this nightmare and so agreed. DCPP arranged for Kaitlin to provide a hair follicle sample at a testing center.
52. In December, the hair follicle test results returned negative for all substances.
53. The caseworkers also probed Kaitlin for the names and contact information for her children's fathers. Kaitlin was taken aback – neither of the fathers were her children's main providers and caretakers, yet DCPP wanted to turn to them to evaluate Kaitlin's mothering. Her newborn's father was not even listed on the birth certificate and was not involved in his life. Kaitlin provided the requested information; she was desperate to do whatever she could to clear her name and ensure her children stayed with her.⁷
54. Throughout the investigation, Kaitlin was emotional, crying every day while she cared for her newborn. She remained on edge and unable to relax, a stressor that exacerbated all post-birth anxieties.
55. DCPP returned to Kaitlin's home for a final home visit in December of 2022. DCPP interviewed F. alone again – a third time – which frustrated Kaitlin. She did not want her

⁷ In fact, Kaitlin had left her ex-husband to protect F. from precisely what VVH and DCPP alleged she did. Kaitlin's ex-husband had grown addicted to opioids early in F.'s life, ultimately turning to heroin. Kaitlin ended their marriage in order to protect her child from a parent's drug use. Fortunately, her ex-husband is now sober, but Kaitlin could not believe that the state wanted to turn to Kaitlin's ex-husband to determine whether she is a fit mother.

son to be concerned, and she was worried that he would no longer believe the excuse her friend had given him to explain the interviews.

56. Later in December, Kaitlin learned that DCPD had finally determined the allegation of abuse to be “unfounded” and terminated the investigation. While Kaitlin is relieved DCPD terminated the investigation, she knows the Division will retain her file for at least three years, leaving Kaitlin anxious that DCPD will again subject her to another invasive investigation and potential separation from her children without any valid basis.
57. Because of her traumatic experience, Kaitlin has developed a fear of medical tests – she is afraid that they will be used against her.
58. A couple of weeks after M. was born, Kaitlin had to bring M. to VVH for testing. Although she wanted to get M. the care he may need, she no longer trusted the hospital – the staff had assumed she was a bad mother when she had not done anything wrong. Kaitlin experienced severe anxiety while she drove her newborn back to VVH, but she pushed through her anxiety to get M. the tests he needed.
59. Kaitlin fears that the initial positive test results will be part of her permanent electronic medical record, as well as her baby’s medical record, and cause all subsequent doctors who view it to distrust her as a patient and as a mother.
60. Kaitlin also remains concerned that the hospital’s drug test results and DCPD’s investigation will be used against her in any future custody disputes.

CLAIMS

61. Respondent VVH’s actions violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Respondent’s practice of drug testing perinatal patients is unlawful discrimination on the bases of sex and pregnancy.
62. Complainant has suffered substantial harm as a result of Respondent’s actions, including, but not limited to, emotional, mental, and psychological suffering, embarrassment, and humiliation.

PRAYER FOR RELIEF

Complainant respectfully requests the following relief:

- A. Fully investigate Kaitlin’s complaint and issue a finding of probable cause that unlawful discrimination occurred;
- B. Declare that Respondent’s actions violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;
- C. Order Respondent to cease and desist its unlawful discriminatory practice of drug testing perinatal patients without their specific, informed consent and in the absence of medical necessity;
- D. Order Respondent to publish:

- a. Respondent's drug testing policies, including the cut-off levels used for each substance its agents regularly test for; and
 - b. Respondent's policies concerning when and under what circumstances Respondent, its agents, and its contractors contact the Division on Children and Families and/or its subsidiary divisions.
- E. Order Respondent to establish policies, procedures, and training to prevent and respond to pregnancy discrimination;
 - F. Order Respondent to establish policies, procedures, and training relating to ensuring informed consent for drug testing;
 - G. Order Respondent to amend Complainant's medical records and those of her baby to remove any reference to positive drug test results and DCPD involvement;
 - H. Make a formal request to DCPD for a full expungement of Complainant's records, or so order, if within the Director's authority;
 - I. Award compensatory damages to Complainant for mental and psychological pain and suffering;
 - J. Award compensation to cover Complainant's medical expenses incurred at VVH between October 20, 2022, and October 21, 2022;
 - K. Award Complainant costs and attorneys' fees; and
 - L. Grant such other relief as the Director deems proper.

Dated: March 8, 2023

Newark, NJ

Respectfully submitted,

American Civil Liberties Union
of New Jersey Foundation



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