

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

Kate L [REDACTED])
)
Complainant,)
)
v.)
)
Hackensack University)
Medical Center,)
)
Respondent.)

Administrative Action

ADMINISTRATIVE COMPLAINT

INTRODUCTION

1. On September 20, 2022, Kate L [REDACTED] went to Hackensack University Medical Center (“HUMC”) to deliver her first child.
2. Unbeknownst to Kate, 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, HUMC collected Kate’s urine to perform a drug test without her knowledge or informed consent. HUMC conducted the test only because Kate was pregnant, even though there was no medical necessity or justification for testing Kate specifically or perinatal patients generally.
4. Because she had consumed poppy seeds earlier that day, Kate’s urine returned a preliminary positive result for opiates. HUMC failed to conduct a confirmatory test and did not inform Kate of the drug test for four days.
5. On the basis of this single preliminary test result, and without conducting a confirmatory test as requested by Kate, and despite the fact that tests performed on her newborn were negative for opiates and other substances, HUMC, following their internal protocol, contacted the New Jersey Division of Child Protection and Permanency (“DCPP”) to report Kate for possible child abuse and neglect.
6. HUMC 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 Kate and her family caused serious and lasting emotional trauma that has shattered Kate’s trust in medical professionals and made her fear having another baby.

8. Kate files this complaint to ensure that HUMC 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 accordingly. Kate also seeks a declaration that HUMC's actions were unlawful, requests compensatory damages, and seeks additional relief as described below.

PARTIES

9. Complainant Kate L [REDACTED] is an adult resident of [REDACTED] New Jersey and the mother of A.L., her child born on September 21, 2022, at HUMC.
10. Respondent Hackensack University Medical Center is a not-for-profit corporation under the Hackensack Meridian Health network of hospitals. HUMC's principal place of business is located at 30 Prospect Avenue, Hackensack, NJ 07601 in Bergen County. Respondent HUMC was, at all relevant times, 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 in accordance with the customs, policies, and practices of HUMC. HUMC is a place of public accommodation as defined by N.J.S.A. 10:5-5(1).

FACTS

Kate's Early Pregnancy

11. Kate and her husband, Jesse L [REDACTED] had always dreamed of a big family. On their very first date, they discussed their love for children and their desire to have many of them.
12. In January 2022, Kate learned she was pregnant. She and Jesse were thrilled to welcome their first baby and begin to expand their family. Throughout the duration of her pregnancy, Kate sought out and received the necessary and appropriate prenatal medical care.
13. At every prenatal medical appointment, Kate's doctors took a urine sample. Kate was accustomed to providing urine samples during obstetrics and gynecology ("OB/GYN") appointments, which she understood were used to measure proteins. She was never advised that they were used for drug testing purposes.
14. In May 2022, Kate and Jesse learned that their baby would be born with a medical condition that required her to receive specialized care. After several meetings with doctors to learn about the condition and their baby's needs, they arranged for the baby to receive surgery at NYU Langone Health soon after her birth. Those surgeons recommended that the baby come in for an initial appointment during her first week of life. The surgeons also explained that placement in the neonatal intensive care unit ("NICU") is not necessary to treat babies born with this condition.
15. As is often the case in so many pregnancies, Kate developed cravings for certain foods. For her part, Kate craved "everything" bagels; bagels topped with sesame seeds, salt,

garlic, and poppy seeds, among other things. By her count, Kate ate everything bagels with poppy seed toppings two to three times each week throughout her pregnancy.

16. Although Kate did not know it at the time, the ingestion of food with poppy seeds can cause a drug test to return a positive result for opiates.¹

September 20: Kate Is Admitted to HUMC

17. On the morning of Tuesday, September 20, 2022, Kate had a regularly scheduled appointment with her OB/GYN. On her way to the appointment, she stopped to buy an everything bagel, which she ate prior to arriving at her doctor's office.
18. Upon arriving at the office, Kate provided a urine sample. The sample revealed that Kate had elevated proteins in her urine, suggesting that she had preeclampsia – a potentially dangerous condition.
19. Because of the results of this test, Kate's doctor recommended that she go to the hospital right away. Kate drove home to collect a few belongings, and then she and Jesse drove to HUMC where Kate was admitted to labor and delivery.
20. An intake nurse at HUMC handed Kate a plastic cup and directed her to provide a urine sample. Kate provided a sample. Jesse was not asked to provide a urine sample nor any other samples for testing.
21. Neither the intake nurse nor anyone else explained the purpose for the sample nor what HUMC would do with the sample. Because Kate had regularly provided urine samples to her OB/GYN to screen for proteins or nutritional deficiencies during the course of her pregnancy, including that morning, she assumed that the hospital would be using this sample to measure her protein levels, too.
22. However, that afternoon, HUMC performed a drug test on her urine sample without Kate's knowledge or informed consent and without any medical basis. A preeclampsia diagnosis would not provide a medical justification for a drug test, nor would the prenatal diagnosis of A.L.'s anticipated medical condition.

¹ 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*, (Mar. 2018), https://www.samhsa.gov/sites/default/files/workplace/mro_guidance_manual_508_final_march_2018.pdf (stating “[e]ating a normal dietary amount of poppy seeds can cause a urine specimen to test positive for morphine and codeine”); see also 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>.

23. Upon information and belief, HUMC routinely performs drug tests on urine samples from perinatal patients without the patients' knowledge or informed consent.
24. HUMC 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
25. Upon information and belief, HUMC does not inform perinatal patients of the tests that will be performed on the samples, or how the hospital will use or share the results of the tests, nor does HUMC provide perinatal patients the opportunity to opt out of drug tests.

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.ajogfm.org/article/S2589-9333\(21\)00061-6/pdf](https://www.ajogfm.org/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). *See also 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> (opposing mandated drug testing, particularly without patient consent). Furthermore, testing and reporting to child protective services are more commonly targeted toward patients of color. *See, e.g.,* Katharine McCabe, *Criminalization of Care: Drug Testing Pregnant Patients*, 63 J. HEALTH AND SOCIAL BEHAVIOR 162 (Nov. 2021), <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.").

26. HUMC’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
27. HUMC tested Kate’s urine sample at a laboratory within the medical center on the afternoon of September 20 and received results by 5:00 pm the same day. The preliminary test results reported “positive” for opiates.
28. HUMC did not collect any additional samples from Kate for testing and did not perform any confirmatory tests.
29. HUMC’s failure to conduct confirmatory testing on Kate’s sample also runs counter to the recommendations of leading medical authorities.⁴
30. HUMC never asked Kate whether she had used opiates or consumed anything that could trigger a positive result for opiates in a drug test.
31. Kate and Jesse were not informed about the results on September 20, nor at any time in the subsequent three days (September 21-23). Kate’s OB/GYN and other medical professionals treating Kate were informed and/or aware of the test results on September 20 and in the subsequent days.

September 21-23: Kate Gives Birth

32. Kate went into labor at the hospital on September 20 and labored through the night. On Wednesday, September 21, Kate had an emergency Caesarean section (“C-section”). Baby A.L. was born in the early afternoon.
33. For her first two days of life, A.L. was in an incubator in the NICU. Against their wishes for their newborn, A.L. was placed on a feeding tube and oxygen, which were removed by September 23. Upon information and belief, A.L. was removed from an incubator and placed in a regular crib by September 24. The baby remained in the NICU, however, for the next ten days.

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 *Clinical Guidance for Treating Pregnant and Parenting Women with Opioid Use Disorder and Their Infants*, DEP’T HEALTH AND HUM. SERV. & SUBSTANCE ABUSE AND MENTAL HEALTH SERV. ADMIN. (Jan. 2018), <https://store.samhsa.gov/sites/default/files/d7/priv/sma18-5054.pdf> (“Not completing confirmatory urine testing can be disastrous because it can result in false-positive results that may mean the loss of custody of children and, in some states, legal prosecution.”).

34. Kate and Jesse asked medical professionals in and around the NICU why A.L. remained in the NICU after she had been removed from the incubator. The medical professionals continually stated that the NICU was monitoring A.L., but failed to provide any other clarification or reasoning.
35. As she recovered in her hospital room, Kate pumped colostrum – the initial form of breastmilk produced after giving birth – for A.L., which Jesse delivered to the NICU. Upon information and belief, the NICU tested Kate’s colostrum, which was negative for any drugs including opiates.
36. Kate remained in the hospital for a few days to recover. Starting on September 22, Kate was physically able to join Jesse in visiting the NICU to see A.L. They took pictures and admired their infant daughter. Kate and Jesse were thrilled to be parents and were in love with their child.

September 24: HUMC First Tells Kate About the Drug Test

37. In the late evening of Saturday, September 24, after Kate and Jesse had fallen asleep in Kate’s hospital room, a doctor and two nurses from the NICU entered the room. They woke Kate and Jesse to explain how well A.L. was doing; she was eating well, gaining weight, and her phosphorus levels – which they’d been monitoring – were good.
38. Kate was scheduled to be discharged from the hospital at 11:00 am the following day. She asked what milestones A.L. had to meet before she could be released from the NICU. Kate hoped A.L. could go home with her the next day.
39. The doctor explained that they were not sure whether A.L. could be discharged because Kate’s urine sample had tested positive for drugs.
40. Although HUMC had conducted the drug test *four days earlier*, when Kate first arrived at the hospital, this was the first time anyone working for HUMC told Kate and Jesse about the drug test. They were shocked to hear that there had been a drug test and stunned that there could be a positive result. They asked for more information.
41. The doctor left the room and returned with a single sheet of paper. The paper showed a small chart listing the substances tested for during the drug test and providing a negative or positive result. The document contained very little information but read “POSITIVE” for opiates.⁵

⁵ The document provided to Kate contained no information concerning the cut-off level employed to determine whether her sample was positive or negative for each substance. Upon information and belief, however, HUMC used a cut-off level of 300 nanograms per milliliter (ng/mL) to determine the sample was positive for opiates. 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>. In fact, the federal

42. Baby A.L. never showed signs of withdrawal and was never diagnosed with neonatal opioid withdrawal syndrome or neonatal abstinence syndrome.
43. The doctor informed Kate and Jesse that HUMC had also performed a drug test on A.L.'s meconium shortly after her birth on September 21, which returned negative for drugs, including opiates. Kate and Jesse had not known about this test either.
44. Kate was confused and overwhelmed. She did not understand why the hospital would wait a full four days to tell her about a drug test conducted on her urine, and she did not understand how she could receive a positive test result when she had not taken opiates.
45. Kate and Jesse asked whether the test result could be a false positive. The doctor explained that it could be. However, because the drug test had returned positive, HUMC would conduct an investigation and may have to contact the New Jersey Division of Child Protection and Permanency ("DCPP") to report Kate for possible child abuse and neglect of A.L.
46. Kate and Jesse became very emotional. They were terrified what this meant for their child and for them. Kate felt that HUMC was judging her as an unfit mother before she even had a chance to be one.
47. Certain this was a mistake, Kate asked for the hospital to re-test her original sample and offered to provide a new sample for a second test. The doctor advised Kate and Jesse that they would have to look for the sample and ask others at HUMC whether an additional test was possible. Though Kate requested it, HUMC did not perform a confirmatory test.
48. Kate called her OB/GYN's emergency phone line to see whether the office still had Kate's urine sample from the morning of September 20. She thought that HUMC could perform a new test on that sample.
49. A doctor from the OB/GYN practice answered the phone. Kate explained what she learned about the drug test. The practice was already aware of the drug test and the test results; indeed, Kate's OB/GYN learned about the test results shortly before performing the C-section. The doctor advised that her office had not ordered the drug test.
50. The doctor explained that the OB/GYN practice does not perform drug tests on the samples patients provide, that they do not keep urine samples, and they could not provide Kate with her sample from the morning of September 20.

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), <https://www.govinfo.gov/content/pkg/FR-1997-09-30/pdf/97-25823.pdf>.

51. The doctor also told Kate that “this sometimes happens to women of color.” Kate understood this statement to mean that women of color are sometimes subjected to perinatal drug tests, while white women are not.⁶
52. After their meeting with the NICU staff, both Kate and Jesse were distraught. They were unable to sleep. Kate cried all night. Although Kate had been pumping breast milk for A.L. every few hours, she became too overwhelmed and grief-stricken to continue pumping that night and in the days after learning of the test.

⁶ This alarming statement corresponds with decades of data showing that racism and misogyny pervade the healthcare industry. Healthcare professionals are more likely to administer drug tests on Black women and report Black women to government agencies. *See, e.g.,* Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1992). Black women are more likely to be tested for illicit substances than white women. *See* Bonnie D. Kerker, et al., *Patients’ characteristics and providers’ attitudes: predictors of screening pregnancy women for illicit substance use*, 28(2) CHILD ABUSE AND NEGLECT 209 (Feb. 2004). A 2010 study revealed that Black infants were twice as likely as white infants to be screened for prenatal drug exposure. Marc A. Ellsworth, et al., *Infant Race Affects Application of Clinical Guidelines When Screening for Drugs of Abuse in Newborns*, 125 (6) PEDIATRICS 1379 (June 2010). In one study in which urine toxicology tests were collected over a six-month period, it was found that, despite similar rates of substance use among patients in the study, Black women were reported to social services at approximately 10 times the rate for white women. *See* Ira J. Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use during Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322 NEW ENG. J. MED. 1202, 1204 (Oct. 1990), <https://www.nejm.org/doi/full/10.1056/NEJM199004263221706>. Black women face severe disparities in the healthcare system, receiving poorer care and experiencing worse health outcomes while facing greater state scrutiny and criminalization than white women. *See, e.g.,* Linda Villarosa, *Why America’s Black Mothers and Babies Are in a Life-or-Death Crisis*, NY TIMES (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html>. New Jersey is no exception, where Black women “experience seven times the rate of death from pregnancy-associated causes compared to their white counterparts” and infant mortality is likewise higher for infants of color than for white infants. Vijaya K. Hogan, et al., *Nurture New Jersey: 2021 Strategic Plan*, THE STATE OF N.J. (Jan. 2021), <https://nurturenj.nj.gov/wp-content/uploads/2021/01/20210120-Nurture-NJ-Strategic-Plan.pdf>. In New Jersey, Black women are more likely to die from childbirth, and to experience post-partum obstetric hemorrhage, perinatal hypertensive disorders, and Caesarean sections than white women. *See Path to Progress: New Jersey Perinatal Quality Collaborative*, N.J. HOSP. ASS’N (Dec. 2022), <https://www.njha.com/media/717960/path-to-progress-nj-perinatal-quality-collaborative-final-jan-2023.pdf>.

September 25: HUMC Calls DCPD and DCPD Investigates

53. The next morning, Sunday, September 25, HUMC refused to discharge Kate. Hospital staff insisted that DCPD first needed to interview Kate and Jesse before Kate would be permitted to leave. Kate understood that if she left the hospital without being discharged or against medical advice, her insurance company would decline coverage for her hospital stay; Kate worried that she would be responsible for her entire stay if she left, which she knew could be tens of thousands of dollars.
54. An HUMC social worker entered Kate's room. The social worker spoke with Kate and her family about discharge and asked whether Kate had any questions or concerns. Kate inquired about the drug test and what this meant for discharge. The social worker had not been aware of the drug test before Kate mentioned it but consulted Kate's records and saw the test results.
55. The social worker told Kate that it was possible the test was not performed on her urine – *i.e.* that her sample could have been switched with another patient's sample – but then left the room and called DCPD to report the drug test result. Before leaving Kate's hospital room, the social worker told Kate that it was HUMC's policy to contact DCPD any time a drug test returned positive. This conflicted with the policy communicated to Kate the previous night that HUMC would first conduct an internal investigation.
56. As she had the night before, Kate asked for the hospital to re-test her urine and offered to provide a new sample. In response, HUMC staff said they were not sure whether it was possible because it was a Sunday and many staff members were not at work.
57. Shortly after the social worker called DCPD, several administrative staff members entered Kate's hospital room. They were apologetic and could not explain why Kate or her family members had not been informed about the drug test or the results. During the conversation, the administrative staff members admitted that the positive opiate result could have been a false positive.
58. Representatives from DCPD arrived in the afternoon and conducted separate interviews with Kate and Jesse. They asked Kate whether she would be willing to provide another sample for a new test. Kate immediately agreed, and the hospital finally collected a new sample to test. The test came back negative for all substances.
59. Kate was discharged from HUMC around 6:00 pm on September 25 without her child. While Kate was relieved to finally leave the hospital, she was filled with dread: her new baby remained in the care of people who had kept critical information from her and had broken her trust.

September 26-October 1: Baby A.L. Remains in the NICU

60. On Monday, September 26, representatives from DCPD visited Kate and Jesse's home to conduct an inspection, walking through their home. The inspection was extremely distressing for the new parents; it was terrifying that a representative from the

government was inspecting their home to determine whether they were fit to parent, despite months preparing for their baby to come home.

61. During the visit, Kate informed the representatives from DCPD that the drug test conducted on September 25 came back negative for all substances. The representatives had not known about these results until Kate informed them, suggesting that HUMC had failed to share the results with DCPD.
62. After conducting the home visit, DCPD cleared Kate and Jesse to take baby A.L. home. DCPD communicated this to HUMC that same day. Nevertheless, without providing any medical justification, HUMC would not discharge A.L. despite DCPD's assurance that it was safe for baby A.L. to be returned to her parents.
63. Kate and Jesse visited A.L. in her crib in the NICU over the next 5 days. The updates on A.L.'s eating, weight gain, and other health indicators remained normal. Despite their requests for information, at no time did HUMC provide any reports on the medical need for continued monitoring of A.L. in the NICU. Kate and Jesse could not understand why A.L. remained there and were eager to bring her home and begin treatment for her condition.
64. On or about Thursday, September 29, one of the doctors working in the NICU stated to Kate and Jesse that she would need to feel "comfortable" before permitting Kate to take A.L. home. Kate felt that the doctor was judging her as a mother and insinuating that she was not trustworthy.
65. A.L. was finally discharged on Saturday, October 1 – ten days after her birth and five days after DCPD cleared Kate to bring her baby home.
66. As a result of A.L.'s extended stay at HUMC, she missed her first appointment with the specialist surgeons, and was unable to see her surgeons in her first week of life, as they had recommended.

The Ongoing Investigation and Lasting Trauma

67. Over the next two months, Kate and Jesse continued to be subject to a full investigation by DCPD.
68. Kate was required to complete a Certified Alcohol and Drug Counseling evaluation – an assessment through which a caseworker evaluates the parent for substance abuse and makes a recommendation to DCPD regarding substance abuse treatment and the child's placement.
69. During the assessment, Kate was required to provide a urine sample in full view of the caseworker conducting the assessment. She was mortified to urinate in front of a stranger, and further humiliated because her body was still visibly recovering from labor and surgery, which the caseworker could see.
70. The test performed on Kate's urine sample was negative for all substances.

71. Based on Kate's drug test and her responses to the assessment questions, the case manager did not recommend any substance abuse treatment to DCPD.
72. During the assessment, the case manager told Kate that she may have been targeted for a drug test at HUMC because of her tattoos, which are visible on her limbs. On the day she went to HUMC to deliver A.L., Kate was wearing shorts and a t-shirt such that most of her tattoos were visible.
73. In November, Kate received a letter from DCPD stating that the allegation of neglect was "unfounded."
74. Kate and Jesse are relieved that DCPD terminated the investigation. However, the closing letter made clear that the Division will retain the family's file for at least three years, leaving Kate and Jesse anxious that DCPD will again subject them to an invasive investigation and family separation without any valid basis.
75. As a result of HUMC's drug test and referral to DCPD, Kate has lost all confidence in medical professionals and feels she cannot trust any doctors. She fears that the initial positive test result 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.
76. Although Kate planned to have another child in the first two years of A.L.'s life, she is terrified of returning to a hospital for any medical procedure, especially labor and delivery. While she wants to have another child, Kate is so distressed by her experience that she is frightened to give birth again. Kate does not trust hospitals or OB/GYN physicians with her information or with her health.
77. Even routine medical appointments cause Kate extreme anxiety. A.L. has had many appointments with the specialists treating A.L.'s condition. At each of these appointments, Kate is concerned that the doctors will learn of or discuss the positive drug test and will question Kate's ability to parent A.L.
78. A.L. underwent surgery in January of 2023. She was not permitted to eat for the six hours preceding the surgery, so A.L. was hungry and crying while at the doctor's office. During that time, Kate was panicked that the medical professionals and the other patients were judging her as a "bad mother" while A.L. cried. She is terrified that any perceived misstep could lead to another DCPD investigation and separation from her daughter.

CLAIMS

79. Respondent HUMC'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 sex and pregnancy discrimination.
80. 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 Kate'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 DCPP involvement;
- H. Make a formal request to DCPP 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 HUMC between September 20, 2022, and October 1, 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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