

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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JENNIFER CAPASSO,

Plaintiff,

- against -

Index No. \_\_\_\_\_

MEMORIAL SLOAN KETTERING CANCER  
CENTER,

**COMPLAINT AND  
JURY DEMAND**

Defendant.

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Plaintiff Jennifer Capasso, by and through her attorneys, Wardenski P.C. and Correia & Puth, PLLC, alleges as follows:

### **PRELIMINARY STATEMENT**

1. Plaintiff Jennifer Capasso has been receiving treatment for Stage 4 metastatic rectal cancer at Defendant Memorial Sloan Kettering Cancer Center (“MSK”) since 2020.

2. Ms. Capasso was diagnosed with Stage 3B rectal cancer in 2019. She initially received treatment at another hospital but, after her cancer progressed to Stage 4, she transferred her care to MSK because of its reputation as one of the best cancer hospitals in the country. Then only 40 years old, Ms. Capasso wanted the best chance possible of receiving world-class medical treatment and surviving an otherwise devastating and likely fatal cancer.

3. Ms. Capasso is transgender. Although she was assumed to be male at birth, she is a woman, her gender identity is female, and she has lived in accordance with that authentic identity in every aspect of her life for many years. In 2017, she legally changed her name to Jennifer and obtained legal identity documents reflecting her female sex.

4. By the time she first registered as a patient at MSK, Ms. Capasso had socially and legally transitioned to her female sex. In 2017, she obtained a corrected birth certificate from the

State of Connecticut, which accurately reflects her female sex. In 2017, she obtained a New York State driver's license with a sex designation, "F," that accurately reflects her female sex.<sup>1</sup> Following her transition, all of Ms. Capasso's medical providers—including her primary care providers, therapist, gender-affirming care specialists, and providers at the hospital where she initially began cancer treatments—accurately reflected her female sex in her patient records and referred to her as female in their interactions with her as a patient in their care.

5. Although MSK holds itself out publicly as a welcoming environment for transgender cancer patients,<sup>2</sup> it has been anything but for Ms. Capasso.

6. Throughout her nearly five years of treatment at MSK, Ms. Capasso has been subjected to severe, pervasive, patently offensive, and deeply harmful discrimination and mistreatment because of her gender identity and transgender status. MSK employees have repeatedly referred to her as male, including by addressing and referring to her with male pronouns and honorifics; subjected her to discriminatory and derogatory comments about being transgender; and subjected her to inferior treatment because of her gender identity throughout her time as a patient.

7. In one egregious example, in March 2022, while she was under anesthesia for a lung surgery to remove a metastatic tumor, operating room nurses and staff engaged in a lengthy discussion about her transgender status, during which they mocked her for having "man parts," described her and her partner (who is also a transgender woman) as "both men," commented that

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<sup>1</sup> Plaintiff uses the term "sex designation" to refer to the written label or marker indicating one's sex on patient records. This term is also commonly referred to as a "gender marker."

<sup>2</sup> See K. Sobolik, MSK, *Being Seen: Compassionate Cancer Treatment for Transgender People* (May 31, 2024), <https://www.mskcc.org/news/being-seen-compassionate-cancer-treatment-for-transgender-people> [<https://perma.cc/C7XH-RKLH>]; MSK, LGBTQI+ Cancer Care Program, <https://www.mskcc.org/experience/patient-support/lgbtqi-cancer-care-program> (last visited Mar. 19, 2025) [<https://perma.cc/9GXZ-LART>].

it was “not right,” and complained that her patient chart had a “F” sex designation and that it should be changed to “M.”

8. At or around the time of this surgery, MSK unilaterally changed Ms. Capasso’s sex designation in her patient records from “F” to “M,” without her knowledge or consent. After being accurately reflected as female for two years, she was now incorrectly marked as “male” on her patient records, including visit summaries, consultation notes, discharge notes, pathology reports, and radiology records, among other documents. The “male” sex designation has also frequently been visible to Ms. Capasso on computer monitors during various medical procedures.

9. Following MSK’s unilateral and unauthorized change in 2022, Ms. Capasso made multiple requests that MSK revert her sex designation to “F” in her patient records. Over several years, MSK responded to Ms. Capasso’s written, telephonic, and in-person requests with stonewalling and denials. From March 2022 until February 2025, Ms. Capasso’s patient records consistently and incorrectly identified her sex, gender, and “birth sex” as “male.” Even now, under MSK’s new electronic records system launched in February 2025, MSK records continue to list her “sex assigned at birth” as “male,” despite the fact that Ms. Capasso’s birth certificate correctly lists her sex as female. Over Ms. Capasso’s objections, MSK makes that information visible both to Ms. Capasso and to all providers and staff at MSK with access to her patient records, regardless of its clinical relevance to the care being provided.

10. Being incorrectly labeled as “male” in her MSK patient records has exposed Ms. Capasso to embarrassment and humiliation, frequent misgendering, fear of going to MSK for critical treatments and surgeries, and even faulty diagnoses.

11. In 2024, an MSK provider incorrectly diagnosed her with gynecomastia, a condition marked by enlarged breast tissue in men. The provider evidently failed to understand

that the breast augmentation Ms. Capasso had received as a gender-affirming treatment was not the same as excess breast tissue that might warrant a gynecomastia diagnosis.

12. Ms. Capasso chose MSK—and remains a patient there—because it offers her state-of-the-art treatments unavailable at other hospitals that give her the best chance of surviving cancer. But, over the past five years, she has had to balance the benefit of those treatments with the considerable personal cost of being subjected to pervasive discriminatory treatment in the very hospital she entrusts with her life. That discrimination—and the persistent fear that she might experience similar mistreatment during any given visit to MSK—has caused her to suffer significant emotional distress, humiliation, embarrassment, and exacerbated gender dysphoria, all while undergoing advanced-stage cancer treatments.

13. Ms. Capasso brings this civil rights lawsuit against MSK for violating her civil rights under the prohibitions against sex and gender identity discrimination in places of public accommodation under the New York State Human Rights Law, N.Y. Exec. Law §§ 290–301 (“NYSHRL”), and the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101–8-134 (“NYCHRL”), and its implementing regulations. Ms. Capasso seeks compensatory damages, punitive damages under the NYCHRL, and all appropriate injunctive and equitable relief to address, remedy the effects of, and prevent the recurrence of the discriminatory treatment and hostile health care environment to which she has been subjected at MSK.

#### **PARTIES**

14. Plaintiff Jennifer Capasso is an adult resident of Queens County, New York. Ms. Capasso is and at all relevant times has been a patient of MSK, where she has been treated for Stage 4 metastatic rectal cancer since 2020.

15. Defendant MSK is a comprehensive cancer treatment hospital and research institution with its headquarters and primary campus located at 1275 York Avenue in New York, New York. MSK is a not-for-profit corporation. MSK was incorporated in and has its principal place of business in New York. MSK is a “place of public accommodation” within the meaning of the NYSHRL, N.Y. Exec. Law § 292(9), and a “place or provider of public accommodation” within the meaning of the NYCHRL, N.Y.C. Admin. Code § 8-102. Plaintiff Capasso has received and continues to receive treatments at several MSK locations in Manhattan.

### **JURISDICTION AND VENUE**

16. This action arises under the NYSHRL and the NYCHRL.

17. This Court has personal jurisdiction over Defendants pursuant to N.Y. CPLR § 301.

18. New York County is the appropriate venue pursuant to N.Y. CPLR § 503(a) because Defendant MSK is a resident of this County and a substantial part of the acts and omissions giving rise to Plaintiff’s claims occurred in this County.

### **STATEMENT OF FACTS**

#### **Background on Jennifer Capasso**

19. Plaintiff Jennifer Capasso is a 45-year-old woman. She is a resident of Long Island City in Queens, New York. She has been employed as a website engineer and programmer at various companies in New York throughout her career.

20. Ms. Capasso is transgender. Although she was assumed to be male at birth, she is a woman and her gender identity is female.

21. Ms. Capasso has known herself to be female for most of her life. She came out as transgender and began her gender transition in 2015.

22. In 2015, Ms. Capasso was diagnosed with gender dysphoria, a serious condition marked by the clinical distress associated with living or being treated as a sex that conflicts with one's gender identity.

23. Ms. Capasso began her social transition in 2015, including by adopting the name Jennifer, using female pronouns (e.g., she/her), and beginning to express her female identity publicly, including by wearing traditionally women's clothing and makeup, maintaining a feminine hairstyle, and speaking in a more feminine manner, among other things.

24. In 2017, Ms. Capasso legally changed her name to Jennifer and corrected the sex designation on her Connecticut birth certificate, New York driver's license, and Social Security records to "female."

25. Since at least 2017, and at all times relevant to this complaint, Ms. Capasso has lived as a woman in every aspect of her life.

26. In the years that followed, Ms. Capasso continued her process of gender transition through, among other things, receiving gender-affirming health care, including feminizing hormone treatments, facial feminization surgery in 2021, and breast augmentation surgery in 2022.

27. At all times relevant to this Complaint, Ms. Capasso's Connecticut birth certificate, New York State-issued driver's license, and other identity documents have contained her legal name, Jennifer Danielle Capasso, and have contained a sex designation indicating that her sex is female.

28. Accordingly, when she registered at MSK in 2020, she listed her sex as female on her registration documents.

### **Overview of Ms. Capasso's Cancer Treatments at MSK**

29. Ms. Capasso was diagnosed with Stage 3B rectal cancer in or about September 2019. Until December 2019, she received chemotherapy and radiation treatments at another hospital. In or about December 2019, Ms. Capasso went into remission.

30. A few months later, however, Ms. Capasso's doctors found that the cancer had metastasized to her liver and diagnosed her with Stage 4 metastatic rectal cancer.

31. In or around April 2020, Ms. Capasso transferred her care to a treatment team at MSK. She has received continuous cancer treatment and related care at MSK ever since.

32. Ms. Capasso has received ongoing treatments at MSK from 2020 to present on a regular basis (sometimes several times per week), including multiple liver and lung resection surgeries, chemotherapy, imaging scans, and maintenance treatments during periods of remission. In August 2024, after a period of remission, Ms. Capasso learned that her cancer had returned after her doctors found a new metastatic tumor in her lung. Since then, she has received additional surgeries, chemotherapy, and other treatments at MSK.

33. Ms. Capasso chose to receive care at MSK—and to continue her treatment there in the years since—because of its reputation as one of the best, if not the best, cancer hospitals in the country, and because it offered state-of-the-art treatments that were unavailable at other hospitals.

### **Experiences with Misgendering by MSK Providers and Staff from 2020 to 2021**

#### *Liver Resection Surgery on June 19, 2020*

34. On or about June 19, 2020, just two months after Ms. Capasso became an MSK patient, she underwent a partial liver resection surgery, her first of several surgeries at MSK to remove metastatic tumors from her body. During her recovery from this surgery, MSK assigned

Ms. Capasso to a room with a female roommate. Nevertheless, MSK personnel repeatedly and purposefully misgendered her, referring to her as “he,” “him,” and “sir.”

35. During this recovery, MSK nurses provided Ms. Capasso with inferior and less responsive attention than her female roommate (who, on information and belief, was not transgender), including by refusing to adjust her pain medications and even refusing to give her water when she asked for it. At one point, a nurse scoffed at her when she requested more pain medication. Ms. Capasso and her then-partner and primary caregiver, Adriana Capobianco, observed the same nursing staff be more polite to, and responsive to the requests of, Ms. Capasso’s roommate.

36. Ms. Capasso and Ms. Capobianco complained about the misgendering and other mistreatment to the attending physician and to MSK’s patient representative office, which is MSK’s patient-facing office responsible for addressing patient-related issues surrounding hospital policies, practices, climate, and experiences. Ms. Capobianco specifically told the charge nurse that Ms. Capasso had been misgendered a number of times, including being called “he” instead of “she.” Ms. Capobianco repeated these concerns in later telephone calls, including describing further incidents of staff using male pronouns and referring to Ms. Capasso as “sir,” stating that Ms. Capasso was not being treated the same as other patients, and complaining that Ms. Capasso was experiencing worse treatment because she is transgender.

37. Only after multiple complaints, an MSK administrator and nursing supervisor belatedly arranged for her to be moved to another floor away from the offending nursing staff.

*Discriminatory Treatment by Colorectal Surgeon from 2020 to 2021*

38. Later in 2020, Ms. Capasso went into remission. She continued regular monitoring and diagnostic testing at MSK for the following year.



39. From 2020 to 2021, Ms. Capasso was treated by a colorectal surgeon, who specializes in rectal cancer.

40. During this period, that doctor performed multiple sigmoidoscopies on Ms. Capasso. A sigmoidoscopy is an invasive procedure involving inserting a tube into the patient's rectum to examine the colon and other areas. The patient is conscious and alert during the course of the procedure.

41. During at least one of these procedures, in or about June 2021, the doctor misgendered Ms. Capasso, referring to her using male pronouns. The doctor's misgendering of her made Ms. Capasso feel unsafe and humiliated, and it heightened her gender dysphoria. She could not tolerate the prospect of receiving further treatments from that doctor and potentially experiencing the same type of discriminatory treatment.

42. To avoid further interactions with that doctor, and avoid being misgendered and disrespected during future treatments, Ms. Capasso was forced to switch to another MSK colorectal surgeon in October 2021. Ms. Capasso told her treating oncologist at the time about the reason she needed to switch care to a new surgeon.

**In March 2022, MSK Unilaterally Changed Ms. Capasso's Sex Designation in Her Patient Records from "Female" to "Male" Without Her Knowledge or Consent**

43. On December 23, 2021, Ms. Capasso learned that a magnetic resonance imaging ("MRI") scan on December 18, 2021, had revealed a metastatic tumor on her lung, indicating that her cancer had recurred.

*Lung Resection Surgery on March 7, 2022*

44. On March 7, 2022, Ms. Capasso underwent a lung resection surgery at MSK to remove the metastatic tumor.

45. When she was brought to the operating room for the March 7, 2022, surgery, Ms. Capasso initiated an audio recording of the procedure on her phone before she was placed under general anesthesia.

46. While Ms. Capasso was on the operating table, the nurses and providers in the operating room engaged in a prolonged and disrespectful discussion about her gender identity, transgender status, and anatomy, none of which was relevant to the surgery she was undergoing.

47. Shortly after Ms. Capasso became unconscious from anesthesia, one of the operating room nurses began discussing Ms. Capasso's gender identity with the other surgical team members present in the operating room. The nurse announced that Ms. Capasso "still has man parts" and that she "doesn't understand it." A surgical team member repeated "it's not right" twice, adding, "it doesn't make sense." Other comments from surgical team members in the room included calling Ms. Capasso "a transgender man" and remarking, "I don't get any of it, I'm sorry." One of these employees referred to Ms. Capasso as "a male to female transgender." These statements all referred to Ms. Capasso's transgender status.

48. During this same conversation, a member of the surgical team referred to both Ms. Capasso and her then-partner, Ms. Capobianco, who is also a transgender woman, as being "both men."

49. The nurse that initiated the discussion about Ms. Capasso's transgender status then expressed displeasure that Ms. Capasso's sex was listed as "female" in her patient records. For several minutes, that individual and other staff in the operating room discussed and debated how Ms. Capasso should be identified within MSK's system and whether her female sex designation in her patient records conflicted with MSK's policies—all while Ms. Capasso was unconscious on the operating table undergoing major surgery.

50. Shockingly, *during* Ms. Capasso's surgery, the same nurse contacted an MSK administrator to complain that Ms. Capasso was identified as female on her medical chart and to demand that the administrator change Ms. Capasso's sex designation from "female" to "male" in her MSK patient records.

51. On or around March 7, 2022, MSK changed Ms. Capasso's sex designation in her patient records from "female" to "male" without her knowledge or consent.

52. On information and belief, MSK changed Ms. Capasso's sex designation to "male" because the operating room nurse complained that Ms. Capasso's patient records listed her sex designation as "female."

53. Until that point, virtually all of Ms. Capasso's MSK patient records—including her charts, clinical notes and after-visit summaries, and electronic records (including those visible on computer monitors during her procedures)—had accurately reflected her correct, legal sex: female.

54. After MSK unilaterally changed her sex designation on or around the date of the March 7, 2022, surgery, and until late 2024 or early 2025, nearly all of Ms. Capasso's records inaccurately labeled her as "male," typically indicated in part by the letter "M" on the first page of her records.

*Ms. Capasso's Discovery of MSK's Unauthorized Change of Her Sex Designation to "Male"*

55. No one from MSK informed Ms. Capasso that her sex designation had been unilaterally changed from her correct sex, female, to an incorrect sex, male.

56. A few months after the March 2022 surgery, Ms. Capasso noticed that one of her patient records listed her sex as "male." After seeing the "male" sex designation, Ms. Capasso reviewed her medical records closely and discovered that she had been misgendered and misidentified as "male" in all of her records since March 2022.

57. Ms. Capasso was horrified by this discovery. Until March 2022, MSK had accurately identified her as female in her medical records. She could not understand why MSK had unilaterally decided that she is “male” and changed her medical records without her knowledge or consent.

58. After discovering that MSK had changed her sex designation, Ms. Capasso listened to the audio recording that she had made of her March 7, 2022, liver resection surgery, which she had not done previously. She was devastated to hear her surgical team mocking her gender identity and discussing her genitalia while she was unconscious on the operating table. She was appalled to hear that, while her surgery was in progress, a member of her surgical team had called a hospital administrator to demand that her sex designation be changed.

59. After discovering this mistreatment and MSK’s actions, Ms. Capasso suffered extreme distress, exacerbated gender dysphoria, and fear about what she might experience when she returned to MSK for her ongoing cancer care.

*MSK Administrators’ Refusal to Change Ms. Capasso’s Sex Designation Back to Female*

60. On November 14, 2022, Ms. Capasso’s then-partner, Ms. Capobianco, emailed a letter from Ms. Capasso to David Smith, LMHC, a patient representative in MSK’s patient liaison office. The letter reported to MSK that Ms. Capasso had experienced hostility and mistreatment from MSK medical providers and staff because of her gender identity. It detailed the misgendering that Ms. Capasso had experienced over the previous two years and complained that MSK had changed Ms. Capasso’s sex designation to “M” or “male” without her knowledge or consent. The letter attached several of Ms. Capasso’s medical records as examples of the change to her sex designation from “female” to “male.” The letter requested that MSK immediately restore Ms. Capasso’s sex designation to “female.”

61. At around this same time, Ms. Capasso shared with Mr. Smith and Jorge Capote, MSK's Vice President of Patient Relations, her recording of the March 7, 2022, surgery, which included the operating room staff's lengthy discussion about her transgender status and the nurse's call to a hospital administrator demanding that MSK change Ms. Capasso's sex designation to "male."

62. On November 15, 2022, Mr. Capote telephoned Ms. Capobianco in response to this correspondence. He stated that he was in receipt of the complaint letter and that he agreed that the request to revert Ms. Capasso's sex designation to "female" was reasonable. Mr. Capote stated that he had listened to the recording multiple times and that it was clear to him that MSK has some "issues" to work on. Mr. Capote promised to make the situation right, assuring Ms. Capobianco that "you have my commitment, I will see this through."

63. On November 25, 2022, Ms. Capasso forwarded a copy of her complaint letter to Kelly Haviland, PhD , RN , FNP-BC, TGNB-C, who was at the time MSK's LGBTQI+ Clinical Consultant.

64. On November 30, 2022, Ms. Capobianco sent an email to Mr. Smith with a photo of a patient bracelet given to Ms. Capasso with an "M" sex designation. Ms. Capobianco wrote in her email that a phlebotomist had misgendered Ms. Capasso that very morning, and noted that Ms. Capasso's records continued to list an incorrect "male" sex designation. In response, Mr. Smith sent Ms. Capasso a message stating that he would be unable to help her.

65. On December 2, 2022, Ms. Capasso forwarded to Dr. Haviland a copy of the November 30 email that Ms. Capobianco had sent to Mr. Smith. Dr. Haviland responded on December 5, 2022, stating that "[w]e have an issue with our labels where they print out sex-assigned-at-birth despite what legal documentation says." Dr. Haviland stated, "I promise I am

working on this with our IT people” and agreed that it is important that Ms. Capasso is referred to as a woman “100% of the time.”

66. On December 7, 2022, by email, Ms. Capasso reported to Mr. Smith, Dr. Haviland, and Mr. Capote that MSK had changed her legal middle name, Danielle, to the incorrect, male name “Daniel” in the MSK system, without her knowledge or consent. This change caused her to receive many auto-generated emails and notices from MSK, such as appointment reminders, addressed to “Jennifer Daniel,” for a period of several weeks.

67. On January 26, 2023, Ms. Capasso met with Mr. Capote and Mr. Smith to request, again, that MSK correct her sex designation in her patient records to “female.”

68. During the January 26, 2023, meeting, Mr. Capote told Ms. Capasso that he would not correct her sex designation. He told her that it would be two or three years until her sex designation could potentially be corrected, and that MSK would only consider making that correction after it switched to a new electronic medical records system, Epic, in 2025. Mr. Capote did not explain why MSK had swiftly and easily changed her sex designation to “male” in March 2022, but would not correct it now.

69. Rather than have MSK take any action to address and remedy Ms. Capasso’s experiences, Mr. Capote offered to have Ms. Capasso speak to some doctors and staff about her personal experiences at MSK. Although Ms. Capasso expressed interest in doing so (while also continuing to demand that MSK fix her sex designation), Mr. Capote never mentioned it again and no such meeting occurred.

70. Following the January 26, 2023, meeting, MSK took no further action to correct Ms. Capasso’s patient records, ensure that she was consistently referred to as female and by female

pronouns by MSK staff, or eliminate the hostility and humiliation that Ms. Capasso experienced at the hands of MSK staff because of her gender identity.

71. On March 16, 2023, Ms. Capasso emailed Mr. Capote and Mr. Smith, attaching a photo of an imaging study she received from another major hospital that week designating her sex as female. She noted that she had “been misgendered on every single imaging study [she has] had at MSK” and that, by sharing a copy of the scan from the other hospital, she hoped to “show [MSK] how easy it is to provide affirming care for patients like [her].”

72. On March 22, 2023, Mr. Capote responded to Ms. Capasso’s email, stating that her email “brings home the importance for us to remain focused on completing our work in fixing the systems & processes that contribute to misgendering . . .” Mr. Capote offered no assurances that MSK would correct her sex designation.

73. By May 7, 2023, Ms. Capasso’s sex designation had still not been corrected. On that date, Ms. Capobianco followed up by email with Dr. Haviland, Mr. Capote, and Mr. Smith about MSK’s ongoing mistreatment of Ms. Capasso. In the email, Ms. Capobianco requested updates, writing that “Jennifer continues to see her imaging labeled – prominently – as ‘Male.’” She continued:

As you know, ongoing imaging is a key component of disease management, and Jennifer does not need any additional source of dread when she goes in for her scans. One institutional misgendering is too many, and we want to be sure that neither Jennifer nor future patients have to deal with this insult and frustration on top of dealing with the horrors of cancer . . . I know I don’t need to reiterate to you that Jennifer should not be referred to nor treated as male under any circumstances – at the very least, not in any patient-facing capacity.

74. Ms. Capobianco emphasized that “it would make a huge difference in quality of care if Jennifer could be as sure of being gendered correctly anywhere she goes at [MSK] as she is when she goes to . . . any of her other [non-MSK] providers. If these providers have been able

to handle this issue effectively, there is not good reason that MSK cannot.” Ms. Capobianco made it clear that this request was urgent, stating, “[W]e just want Jennifer’s CT scans to say ‘F’ instead of ‘M.’ Surely someone has the capacity to make the necessary corrections to her [electronic health records] until the handling of gender identity information can be properly and systematically addressed.”

75. MSK took no action in response to the repeated requests from Ms. Capasso and Ms. Capobianco in 2023 to correctly identify Ms. Capasso as female.

**Since 2022, MSK’s Misidentification of Ms. Capasso as “Male” in Her Patient Records Has Caused Her to Experience Misgendering and Other Discrimination**

76. As a result of MSK’s unilateral change of Ms. Capasso’s sex designation to “male” in 2022, virtually all of her patient records prominently displayed this incorrect designation until MSK launched a new electronic records system, Epic, in February 2025. On many records—including, among others, visit summaries, consultation notes, discharge notes, pathology reports, and radiology records—the sex designation of “male” or “M” was listed at the top of the document. On different records, the field was variously labeled “Sex,” “Gender,” or “Birth Sex,” or had no label at all. Regardless of the label, the field always displayed “M” or “Male.” On numerous occasions, Ms. Capasso also saw the incorrect “male” designation on computer monitors during visits and procedures.

77. MSK’s incorrect designation of Ms. Capasso as “male” caused unnecessary and unwanted attention to her transgender status, and resulted in frequent misgendering by MSK personnel. Since March 2022, Ms. Capasso has been called “sir” or “mister,” or been referred to as “he” or “him,” by MSK personnel on multiple occasions. On information and belief, the “male” sex designation on Ms. Capasso’s patient records contributed to MSK employees’ failure to uniformly address Ms. Capasso as female and use female pronouns.



78. The incorrect “male” sex designation has caused Ms. Capasso to experience faulty diagnoses for sex-related conditions.

79. For instance, after a routine CT scan on February 28, 2024, Ms. Capasso noticed that the clinical statement from the scan reflected a diagnosis of gynecomastia, a clinical condition associated with excess breast gland tissue in cisgender boys and men. Ms. Capasso does not have gynecomastia. As part of her gender transition, however, she received gender-affirming breast augmentation surgery to feminize her appearance and treat her gender dysphoria. On information and belief, her MSK provider incorrectly diagnosed her with gynecomastia because the presence of breasts conflicted with the “male” sex designation on her medical records.

80. This misdiagnosis was deeply distressing to Ms. Capasso, and it exacerbated her gender dysphoria. It reinforced her understanding—resulting from her adverse discriminatory experiences at MSK over the course of years—that many MSK staff do not believe she is a real woman, do not respect her female gender identity, or have not been properly trained on how to treat transgender patients with dignity and respect.

81. Following this misdiagnosis, in or around April 2024, Ms. Capasso telephoned Mr. Smith in MSK’s patient liaison office to renew her requests that the hospital correct her sex designation and accurately reflect her female sex in her patient records. She told him that it was unacceptable that she was being treated this way, and that her incorrect “male” sex designation had almost certainly caused the misdiagnosis. Mr. Smith told Ms. Capasso that he would speak with Mr. Capote.

82. Mr. Smith never followed up with Ms. Capasso in response to her April 2024 complaints.

83. On May 10, 2024, someone at MSK added an addendum to Ms. Capasso's clinical statement for her February 28, 2024, CT scan, merely adding the statement, "Disregard the word gynecomastia." The faulty diagnosis was not, however, removed from the clinical statement.

84. Also in May 2024, Ms. Capasso spoke with someone in the MSK admissions office to ask again for her sex designation to be corrected to "female." Almost immediately after making this request, she received a voicemail from Mr. Smith, reiterating that he was still unable to correct her sex designation until the new Epic medical records system was implemented in 2025.

85. In August 2024, following another routine follow-up CT scan, Ms. Capasso received a radiology report that indicated the growth of a metastatic tumor on her lung, which went unnoticed on another scan several months before, indicating that her cancer had again recurred.

86. Ms. Capasso immediately restarted cancer treatments, including another lung resection surgery in late August 2024, chemotherapy, and other treatments, requiring her to visit MSK more frequently.

87. On August 29, 2024, following a surgery to remove the lung tumor, Ms. Capasso again experienced misgendering. Yet another nurse misgendered her as male during her post-operative recovery at MSK, calling her "Jonathan," a male name that is not her name or listed anywhere in her patient records.

#### **Changes to Ms. Capasso's Patient Health Records in Late 2024 and Early 2025**

88. In September 2024, Ms. Capasso, through counsel, contacted MSK to notify the hospital of the ongoing discrimination that Ms. Capasso was facing and to request appropriate action, including correction of the sex designation in her patient records to "female."

89. Subsequently, MSK took certain steps, including removing the sex designation field from some of Ms. Capasso's past records, but the "male" designation remained on many of her records.

90. Multiple patient records for Ms. Capasso created through January 2025 continued to contain the "male" designation.

91. In early 2025, MSK replaced its previous electronic records system with a new system, Epic. MSK began to implement Epic in late January 2025 and formally launched its use in early February 2025.

92. Since the launch of Epic, newly generated MSK patient documents, such as visit summaries, consultation notes, operative reports, and radiology reports, do not list as information about a patient's sex or gender on the face of those documents. That information is, however, still visible to MSK patients, providers, and hospital staff within the electronic record system.

93. In Epic, MSK records, among other demographic information, a patient's "Sex Assigned at Birth," "Legal Sex," and "Gender Identity." That information is visible to patients through MSK's Epic patient portal, MyChart, and to all MSK providers and staff with access to patient records in Epic.

94. When MSK launched Epic in late January 2025, it populated all three fields for Ms. Capasso as "female." At some point later, MSK changed the "sex assigned at birth" field to "male."

95. Ms. Capasso's "sex assigned at birth" field is visible to all MSK employees with Epic access, alongside her "legal sex" and "gender identity" designations. The "sex assigned at birth" field is not limited to those providers or clinical staff with a legitimate clinical reason to know that Ms. Capasso is transgender. Instead, all MSK personnel, including, for example,

admissions staff and phlebotomists with no clinical need to know Ms. Capasso's transgender status, have access to this information.

96. By making all three fields visible to *all* MSK personnel with access to Epic, regardless of legitimate clinical need, MSK is continuing to call unwanted attention to Ms. Capasso's transgender status every time she visits MSK for treatment.

97. On information and belief, other major medical systems in New York City that use Epic permit patients to choose not to disclose their sex assigned at birth in their patient records. MSK does not provide that option to Ms. Capasso or to any other patient.

98. Ms. Capasso is in active cancer treatment at MSK and, given her experiences to date, is concerned that she will continue to experience discrimination and mistreatment as a transgender patient during future treatments at the hospital.

#### **MSK's Obligations Under New York City Law**

99. At all relevant times, MSK, as a New York City hospital, has been obligated to treat Ms. Capasso and other transgender patients consistent with their gender identity.

100. New York City regulations implementing the gender discrimination provisions of the NYCHRL, adopted in 2017, specifically provide that "[a] covered entity's deliberate refusal to use an individual's self-identified name, pronoun and gendered title constitutes a violation of [the NYCHRL] where the refusal is motivated by the individual's gender," and that "[t]his is the case regardless of the individual's sex assigned at birth, anatomy, gender, medical history, appearance, or the sex indicated on the individual's identification," except in limited circumstances not applicable here. 47 RCNY § 2-06(a).

101. In NYCHRL enforcement guidance, the New York City Commission on Human Rights defines "gender identity" as "the internal deeply-held sense of one's gender which may be

the same as or different from one's sex assigned at birth. A person's gender identity may be male, female, neither or both, i.e., non-binary or genderqueer." The guidance also defines "sex" as "a combination of chromosomes, hormones, internal and external reproductive organs, facial hair, vocal pitch, development of breasts, gender identity, and other characteristics. Gender identity is the primary determinant of a person's sex." New York City Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23), <https://www.nyc.gov/site/cchr/law/legal-guidances-gender-identity-expression.page>.

102. Consistent with these definitions, New York City expressly recognizes that Ms. Capasso's sex is female.

103. MSK's failure to include Ms. Capasso's female sex in her medical records and its employees' repeated misgendering of Ms. Capasso is a violation of the NYCHRL's prohibition on unlawful discriminatory practices based on gender. Specifically, the regulations provide the following example as a violation of the law: "Failing or refusing to include a patient's self-identified name and self-reported gender in their medical record, resulting in the patient being misgendered by staff, even if a patient's sex assigned at birth or gender transition may be recorded for the purpose of providing care." 47 RCNY § 2-06(a).v.

104. Consistent with the NYCHRL and its implementing regulations, the New York City Commission on Human Rights, in 2017, published a LGBTQ Health Care Bill of Rights for patients at New York City health care providers.<sup>3</sup> That document states, in relevant part, that:

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<sup>3</sup> N.Y.C. Dep't of Health & Mental Hygiene, *LGBTQ Health Care Bill of Rights*, available at <https://www.nyc.gov/assets/doh/downloads/pdf/ah/lgbtq-bor-wallet.pdf> [<https://perma.cc/ZE6X-AGEU>]; see also N.Y.C. Dep't of Health & Mental Hygiene, LGBTQ+ Health, <https://www.nyc.gov/site/doh/health/health-topics/lgbtq.page> (last visited Mar. 27, 2025) [<https://perma.cc/963T-77QA>].

In New York City, it is illegal to discriminate on the basis of a person's sexual orientation, gender identity or gender expression in public accommodations, including in health care settings.

You have these rights when seeking health care services in New York City:

...

4. Right to have your gender identity and gender expression recognized, affirmed and documented, including:

4a. Staff members using your self-designated name and pronouns, and mirroring the language you use to describe your body

4b. Access to paper and electronic forms and medical records that use your self-designated name, pronouns and gender marker.

LGBTQ Health Care Bill of Rights ¶¶ 4, 4a, 4b.

**MSK's Discriminatory Treatment of Ms. Capasso Has Caused Her Significant Harm**

105. As a transgender woman, it is essential to Ms. Capasso that she be treated as a woman and with dignity in every aspect of her life, particularly at the hospital that she hopes will save her life.

106. Tragically, since Ms. Capasso's gender transition, MSK has been the only place where she is routinely referred to as male, by male pronouns, and as "sir."

107. As a direct and proximate result of Defendant's unlawful actions, Ms. Capasso has experienced and continues to experience the harmful effects of being misgendered and treated differently than other female patients, including by experiencing extreme emotional distress, embarrassment, stigma, heightened symptoms of gender dysphoria, and post-traumatic stress disorder (PTSD), all while living with Stage 4 metastatic rectal cancer. Ms. Capasso's treating therapist specifically diagnosed her with PTSD based on her experiences confronting discrimination as a transgender patient at MSK.

108. MSK's actions since March 2022 have significantly impeded the progress Ms. Capasso had made in living authentically as the woman that she is. The constant misgendering, including on her patient records, has signaled to her that MSK does not respect that she is a woman and has exacerbated her gender dysphoria and related distress.

109. Ms. Capasso often experiences heightened anxiety and trauma symptoms during everyday interactions with MSK—including speaking with doctors, logging into the patient portal, or going to MSK for care. She also experiences heightened symptoms of trauma and anxiety before procedures at MSK where she must be placed under anesthesia, based on the fear that she will be subject to discrimination, disrespect, and hostility from her treating providers during surgeries.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **Discrimination on the Basis of Sex and Gender Identity or Expression in a Place of Public Accommodation in Violation of the New York State Human Rights Law, N.Y. Exec. Law §§ 290–301**

110. Plaintiff repeats and incorporates by reference all of the allegations set forth above.

111. The NYSHRL states that it is “an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, . . . because of the . . . gender identity or expression [or] sex . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . .” N.Y. Exec. Law § 296(2)(a).

112. Hospitals and medical clinics are “place[s] of public accommodation” under the NYSHRL. N.Y. Exec. Law § 292(9).

113. Through the acts and omissions of MSK and its personnel complained of herein, MSK, as a place of public accommodation, has discriminated against Ms. Capasso because of her

sex and gender identity or expression, made her feel unwelcome and unsafe as a transgender woman, and denied her the full benefits and services to which she is entitled as a patient at MSK.

114. Ms. Capasso has been injured by MSK's discriminatory conduct and has suffered damages as a result.

## SECOND CAUSE OF ACTION

### **Discrimination on the Basis of Gender in a Place of Public Accommodation in Violation of the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101–8-134; 47 RCNY §§ 2-01–2-10**

115. Plaintiff repeats and incorporates by reference all of the allegations set forth above.

116. Under the NYCHRL, “[i]t shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent, or employee of any place or provider of public accommodation . . . [b]ecause of any person’s actual or perceived . . . gender, . . . [t]o refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation . . . .” N.Y.C. Admin. Code § 8-107(4)(a)(1)(a).

117. Under the NYCHRL, “[t]he term ‘gender’ includes actual or perceived sex, gender identity and gender expression, including a person’s actual or perceived gender-related self-image, appearance, behavior, expression or other gender-related characteristic, regardless of the sex assigned to that person at birth.” N.Y.C. Admin. Code § 8-102.

118. Hospitals and medical clinics are considered “place[s] or provider[s] of public accommodation” under the NYCHRL. N.Y.C. Admin. Code § 8-102.

119. Through the acts and omissions of MSK and its personnel complained of herein, MSK, as a place or provider of public accommodation, has discriminated against Ms. Capasso



based on gender, made her feel unwelcome and unsafe as a transgender woman, and denied her the full benefits and services to which she is entitled as a cancer patient at MSK.

120. Plaintiff has been injured by Defendant's discriminatory conduct and has suffered damages as a result.

121. Defendant's discriminatory conduct complained of herein was malicious, made with reckless indifference to Plaintiff's protected rights, and amounted to a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff Jennifer Capasso respectfully requests that this Court:

(a) enter a declaratory judgment that Defendant's discriminatory conduct, policies, practices, procedures, and customs complained of herein violate Plaintiff's rights the New York Human Rights Law, N.Y. Exec. Law §§ 290–301, and the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-101–8-134;

(b) issue a permanent injunction restraining Defendant and its agents, employees, representatives, and successors, and any other person acting directly or indirectly with Defendant, from adopting, implementing, or enforcing all policies, practices, protocols, and customs that deny Plaintiff the use of the sex designation consistent with her gender identity, that expose Plaintiff to intentional, harmful misgendering, or that treat her differently and worse than patients who are not transgender;

(c) award Plaintiff actual damages, in an amount to be proven at trial, to fully compensate Plaintiff for her emotional distress, humiliation, mental anguish, pain and suffering, and other economic and noneconomic losses, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;

(d) award Plaintiff punitive damages in an amount sufficient to punish MSK for violating Ms. Capasso's rights and to deter similar unlawful conduct in the future;

(e) order all other injunctive and equitable relief necessary to cure the adverse effects of Defendant's discriminatory actions;

(f) award Plaintiff her reasonable attorneys' fees and costs as authorized by N.Y. Exec. Law § 297(10) and N.Y.C. Admin. Code § 8-502(g); and

(g) order such other relief as this Court deems just and equitable.

### **DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury of all issues so triable in this case.

DATED: March 27, 2025  
New York, NY

Respectfully submitted,

WARDENSKI P.C.

By: /s/ Joseph J. Wardenski

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