

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 10-CV-02569 RPM-KLM**

**CHANDRA J. BRANDT,**

**Plaintiff,**

**vs.**

**THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY,**

**Defendant.**

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**FIRST AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY**

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COMES NOW Plaintiff Chandra J. Brandt, by and through undersigned counsel, and for her cause of action against Defendant The University of Colorado Hospital Authority, states and alleges as follows:

**NATURE OF THE CASE AND THE PARTIES**

1. This is a civil action for damages and other relief against Defendant The University of Colorado Hospital Authority under the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*, and under section 504, 29 U.S.C. § 794, in particular, as well as under the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* (“ADA”).

2. Plaintiff Chandra J. Brandt (“Brandt”) is a resident of Denver, Colorado.

3. Defendant The University of Colorado Hospital Authority (“Hospital”) is a body corporate and a political subdivision of the State of Colorado, but is not an agency

of the State government and is not subject to administrative direction or control by the regents or by any department, commission, board, bureau, or agency of the State. The mission of the Hospital is to operate a university hospital as a teaching and research hospital providing comprehensive medical care and to facilitate the operation of the clinical programs of the health sciences schools, *inter alia*. The Hospital may sue or be sued pursuant to section 23-21-513, C.R.S.

4. Although it has many facilities and locations, the Hospital's main facilities, and the facilities out of which the Hospital primarily conducts its business, are at the Anschutz Medical Campus in Aurora, Colorado.

#### **JURISDICTION AND VENUE**

5. The parties to this action reside in and regularly do business within the jurisdiction of this Court. This Court has jurisdiction under 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2).

6. On or about January 6, 2009 and October 19, 2011, Brandt filed timely charges of disability discrimination with the Denver District Office of the Equal Employment Opportunity Commission ("EEOC"). The EEOC issued Brandt right-to-sue letters on August 24, 2011 for charge numbers 541-2009-00416 and 541-2011-00128, copies of which are attached hereto as Exhibit D.

#### **GENERAL ALLEGATIONS**

7. Brandt is qualified to work as a surgical technologist. She completed a two (2) year training program, including five (5) months of clinical work, in order to be qualified

in this area. Brandt's clinical work took place onsite at the Hospital's facility. Brandt received good evaluations throughout her training program.

8. Brandt applied for a position as a surgical technologist at the Hospital. On or about September 19, 2008, she had an interview with Deb Geiger, OR Supervisor. The Hospital offered Brandt the position on or about October 2, 2008 by way of a letter. The offer was "contingent upon [her] receiving a satisfactory employee health screen and criminal background check." A copy of the offer letter is attached hereto as Exhibit A.

9. On or about October 2, 2008, Brandt received emails from Mike Booth, a Hospital representative, regarding the health screen, background check, and employee rewards and benefits.

10. On or about October 3, 2008, Brandt received an email from Jennifer Hope from the Hospital's Human Resources Department, verifying that Brandt passed the background check.

11. On or about October 10, 2008, Brandt received a telephone call from Diann Eason ("Eason"), a nurse from the Hospital who specialized in occupational health. During this call, Eason and Brandt discussed Brandt's medical history.

12. Brandt is an individual with epilepsy. She experiences infrequent symptoms and episodes related to the epilepsy, including experiencing seizures a few times a year, and when symptoms do occur, there is sufficient warning so that Brandt has an opportunity to take measures to ensure that she will not endanger herself or others. Over

the course of the five (5) months Brandt worked at the Hospital during her training, she experienced no epileptic seizures or other negative incidents related to her epilepsy.

13. Brandt disclosed her condition and her history during the telephone conversation with Eason regarding Brandt's medical history and in the health history form Brandt completed on or about October 3, 2008, a copy of which is attached hereto as Exhibit B. Brandt also explained how this disability is generally well-controlled and would not be problematic for her working at the Hospital.

14. On or about October 8, 2008, Brandt received an email from Eason requesting medical records from Brandt's neurologist.

15. On or about October 9, 2008, Brandt received an email from Erica Velasquez from the Hospital's Human Resources Department. The email discussed Brandt's orientation schedule and her official offer letter with a starting date of October 27, 2008.

16. On or about October 22, 2008, Brandt received a call from a male nurse from the Hospital. During this call, the nurse informed Brandt of the Hospital's decision to revoke her offer of employment because Hospital officials believed she would be a risk to staff on account of her disability. Brandt was not offered placement in a different job. No interactive process took place, and no accommodation was offered to Brandt. Instead, Brandt was told that she could reapply for positions that did not involve patient contact.

17. Later that day, Brandt received a call from another male nurse from the Hospital, attempting to set up an appointment for a pre-employment physical. The second caller had not been informed that a Hospital official had called earlier to rescind

her job offer. When Brandt so informed him, he accepted her statement as true and did not make any further attempt to schedule the physical.

18. In its position statement to the EEOC, dated January 19, 2011, the Hospital alleged that Brandt “self-terminated” the employment process by refusing to participate in a “Phase II examination” because she was scheduled to undergo brain surgery. That, however, is simply not true. Brandt was never asked to participate in such an examination. Further, Brandt neither underwent nor was schedule to undergo brain surgery at any time.

19. Subsequent to the above events, Brandt has applied for positions at the Hospital for which she was qualified, including applications made on or about May 24, 2010, and October 18, 2010, *inter alia*. As of this date, she has not been contacted about her applications or offered any position.

**CLAIM FOR RELIEF**

**COUNT I**  
**(Violation of the Rehabilitation Act)**

20. The Hospital is an entity that receives federal financial assistance and is a covered entity for purposes of § 504 of the Rehabilitation Act. See Exhibit C (Copy of the Hospital’s Medicare Agreement). As such, the Hospital is prohibited from discriminating against any “qualified individual with a disability.”

21. Brandt is, and was at all times pertinent hereto, a qualified individual with a disability. Specifically, she was qualified to perform the essential functions required of a surgical technologist, with or without a reasonable accommodation.

22. Brandt's particular disability is epilepsy, which substantially limits one or more of her major life activities and/or major bodily functions.

23. The Hospital violated section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by either rescinding a conditional or contingent offer to or terminating Brandt because of her actual disability, her perceived disability, or her record of impairment.

24. As a result of the Hospital's actions, Brandt has suffered damages, including but not limited to the loss of past and future wages and benefits, loss of professional opportunities, emotional distress, and mental pain and anguish.

25. Brandt is entitled to her attorneys' fees and costs incurred in this matter pursuant to 29 U.S.C. § 794a.

26. Brandt is further to any and all relief permitted under the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*, including equitable relief.

**COUNT TWO**

(Violation of the Americans with Disabilities Act)

27. Brandt is a qualified individual within the meaning of 42 U.S.C. § 12111(8) in that she has epilepsy, the Hospital perceives her to have a disability, she has the requisite education to perform and can perform the essential functions of a Surgical Technologist, and either held or desired to hold a position as a Surgical Technologist.

28. The Hospital is an “employer” within the meaning of 42 U.S.C. §§ 12111(5) in that it is engaged in an industry affecting commerce and has more than 15 employees for each working day in each of 20 or more calendar weeks in the current and preceding years. Thus, it is also a covered entity within the meaning of 42 U.S.C. § 12111(5).

29. Brandt was an employee of the Hospital within the meaning of 42 U.S.C. § 12111(4). Alternatively, Brandt was an applicant for employment.

30. Prior to and at the time that the Hospital either terminated Brandt’s employment or failed to hire her, Brandt was qualified for employment as a Surgical Technologist.

31. On October 22, 2008, due to Brandt’s actual or perceived disability, the Hospital either terminated her employment or failed to hire her. 42 U.S.C. § 12112(a). Specifically, the Hospital’s discriminatory actions included, but were not limited to (1) limiting, segregating, or classifying Brandt in a way that adversely affected her opportunities or status because of her actual or perceived disability within the meaning of § 12112(b)(1); (2) utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability within the meaning of § 12112(b)(3)(A); (3) not making reasonable accommodations for the known physical limitations of Brandt, an otherwise qualified individual with a disability who was an applicant or employee, despite the fact that doing so would not impose an undue hardship on the operation of the Hospital’s business within the meaning of § 12112(b)(5)(A); (4) denying employment opportunities to Brandt based on the Hospital’s need to make reasonable

accommodations for her physical impairments within the meaning of § 12112(b)(5)(A); and (5) using qualification standards, employment tests, or other selection criteria that screened out or tended to screen out individuals with disabilities, despite the fact that doing so was not consistent with business necessity, within the meaning of § 12112(b)(6).

32. Brandt has been damaged by the Hospital's violation of the ADA inasmuch as Brandt has been unable to use her education and training as a surgical technologist, and has suffered loss of past and future wages and benefits, loss of professional opportunities, emotional distress, and mental pain and anguish.

33. Brandt is entitled to her attorneys' fees and costs incurred in this matter pursuant to 42 U.S.C. § 12205.

34. Brandt is further to any and all relief permitted under the ADA, 42 U.S.C. § 12117(a), including equitable relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for damages in an amount to be determined at trial, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

Furthermore, Plaintiff specifically prays that Defendant be enjoined from failing or refusing to:

1) provide sufficient remedial relief to make whole Plaintiff for the losses she has suffered as a result of the discrimination against her as alleged in this Complaint, including: a) offering Plaintiff full- or part-time employment, at her option, with any

necessary reasonable accommodation, for which she is qualified, at the average rate she would have earned had her conditional or contingent offer not been rescinded or her employment not terminated, b) plus retroactive seniority, payment of back pay with interest, pension, and related benefits; and

2) Take other appropriate nondiscriminatory measures to overcome the effects of the discrimination.

**JURY DEMAND**

Plaintiff further demands a trial by jury on all issues in this matter.

Dated this 19th day of September, 2011.

Respectfully submitted,

LUBIN & ENOCH, P.C.

s/Nicholas J. Enoch  
Nicholas J. Enoch (# 27113)  
999 18<sup>th</sup> Street, Suite 3000  
Denver, Colorado 80202-2499  
Tel: (303) 595-0008  
Fax: (602) 626-3586  
Email: [nick@lubinandenoach.com](mailto:nick@lubinandenoach.com)  
Attorney for Plaintiff