

**STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF TOMPKINS**

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DANIEL SUDILOVSKY, M.D., individually  
and as a Shareholder of Pathology Associates of Ithaca, P.C.  
and PATHOLOGY ASSOCIATES OF ITHACA, P.C.,

Plaintiffs,

vs.

ELIZABETH PLOCHARCZYK, M.D.

Defendant.

**VERIFIED AMENDED  
COMPLAINT**

**Index No.: EF2021-0348**

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Daniel Sudilovsky, M.D., individually and derivatively as a Shareholder of Pathology Associates of Ithaca, P.C. and Pathology Associates of Ithaca, P.C. (“PAI”) (collectively, “Plaintiffs”) as and for a complaint against Elizabeth Plocharczyk, M.D., (“Defendant” or “Dr. Plocharczyk”) states as follows:

1. PAI is a professional corporation whose business is to provide medical pathology services to the community through the doctors who work at PAI.
2. PAI is a respected pathology practice of high regard and repute located in Ithaca, New York.
3. Dr. Sudilovsky a fifty percent (50%) shareholder of PAI, and Dr. Plocharczyk is the other fifty percent (50%) shareholder of PAI.
4. Dr. Sudilovsky begin working at PAI in 2005 and became the sole shareholder of PAI in 2007.
5. Dr. Sudilovsky was the sole shareholder of PAI from 2007 through 2018 when Dr. Plocharczyk became a 50% shareholder.

6. PAI has very few patients of its own; the vast majority of PAI's work involves analyzing pathology specimens sent to it from other doctors.

7. PAI has only a few contracts to perform pathology services, but those few contracts provide the vast majority of its income.

8. Since Dr. Sudilovsky joined PAI, its revenue has increased by 300% and the laboratory business has increased by 500% due to Dr. Sudilovsky's professional reputation and ability to attract pathology work.

9. Dr. Sudilovsky was responsible for securing contracts with PAI's main clients as described below.

10. PAI has a contract with the Cayuga Medical Center at Ithaca, Inc. ("CMC") to be the exclusive provider of pathology services to CMC (the "Exclusive Pathology Agreement"). A copy of the Exclusive Pathology Agreement is attached hereto as **Exhibit "A."** The Exclusive Pathology Agreement was amended on September 1, 2010 and again on December 17, 2014. Copies of those amendments are attached hereto as **Exhibits "B"** and **"C,"** respectively.

11. PAI has a separate contract with CMC to provide the medical director of the pathology lab at CMC (the "Medical Director Services Agreement"). A copy of the Medical Director Services Agreement is attached hereto as **Exhibit "D."**

12. PAI also has a contract to provide pathology services and be the medical director of the pathology lab at Schuyler Hospital.

13. The Exclusive Pathology Agreement between PAI and CMC expires on December 31, 2022.

14. The Medical Director Services Agreement with CMC expired on September 30, 2021.

15. The PAI contract with Schuyler Hospital to provide the medical director of the pathology lab expires on February 28, 2022.

**THE SHAREHOLDER AGREEMENT**

16. When Dr. Plocharczyk became a shareholder of PAI, she and Dr. Sudilovsky executed a Shareholders' Agreement, a copy of which is attached hereto at **Exhibit "E."**

17. The Shareholders' Agreement states that, "no Shareholder shall be permitted to transfer any of his or her Shares except as expressly permitted by this Agreement. Any Transfer or attempted Transfer of a Share in contravention of the restrictions set forth in this Agreement shall be void *ab initio* . . ." (See, section 2.1)

18. Section 3.1(c) of the Shareholders' Agreement states that the filing of a petition for dissolution of PAI is deemed an offer by that shareholder to sell their shares to the other shareholder.

19. On or about March 16, 2021, Dr. Plocharczyk filed a petition for dissolution of PAI.

20. On or about April 13, 2021, Dr. Sudilovsky exercised his option to purchase one (1) share of PAI from Dr. Plocharczyk.

21. Pursuant to the terms of the Shareholders' Agreement, the closing of the sale of that one share could not take place until July 16, 2021 at the earliest.

22. Given the nature of the relationship between Dr. Plocharczyk and Dr. Sudilovsky as the sole Shareholders of PAI, and given the value of each of the few contracts that PAI has with its clients, the shareholders agreed that neither would compete with PAI while employed by PAI, and for a period of six months after ceasing to be a shareholder of PAI.

23. Pursuant to Section 7.3(a) of the Shareholders Agreement, each Shareholder shall “devote substantially all of his or her working time and efforts to engaging in the conduct of the business and activities of the Corporation and shall engage in such business and activities on substantially a full-time schedule.”

24. Section 7.5(a) of the Shareholders’ Agreement prohibits the shareholders from competing

with the Corporation in any business or activity engaged in by the Corporation or assist any Person who so competes with the Corporation and any such business or activity in the conduct of the same (any of the foregoing, “*Competitive Activity*”); and (ii) no Shareholder shall, for his, her or its own account or for the account of any other Person, solicit, endeavor to entice away, or otherwise interfere with the relationship of the Corporation with any of its patients or employees . . . or induce or attempt to influence any third-party to terminate, reduce, or adversely alter its business dealings with the Corporation (any of the foregoing, “*Solicitation Activity*”).

25. Section 7.5(c) of the Shareholders Agreement states that “the foregoing provision of this Section 7.5 shall bind a Person at all times when he or she is a Shareholder,” and thereafter, the Shareholders are prohibited from engaging in Competitive Activity or Solicitation Activity for a period of six months following the person’s separation from PAI.

26. Thus, both shareholders of PAI (Dr. Plocharczyk and Dr. Sudilovsky), are prohibited from competing with PAI while they are shareholders and for a period of six months after ceasing to be shareholders of PAI.

**DR. PLOCHARCZYK IS VIOLATING THE SHAREHOLDERS' AGREEMENT**

27. Dr. Plocharczyk submitted a proposal to CMC by which CMC would agree to have Dr. Plocharczyk, either individually or through an entity that she has formed, perform pathology services for CMC.

28. Dr. Plocharczyk, while still a shareholder of PAI, actively sought to enter into a contract with CMC to perform Pathology services for CMC.

29. CMC awarded a contract for pathology services to Dr. Plocharczyk through her newly formed entity, Cayuga Pathology, PLLC (“Cayuga Pathology”).

30. Upon entering the contract with Cayuga Pathology CMC terminated its contract with PAI.

31. Dr. Plocharczyk’s actions constitute competition with PAI in direct violation of section 7.5(a)(i) of the Shareholders’ Agreement.

32. Dr. Plocharczyk’s actions were intended to induce or attempt to influence CMC to terminate, reduce, or adversely alter its business dealings with PAI, in direct violation of section 7.5(a)(ii) of the Shareholders’ Agreement.

33. The shareholders of PAI agreed that a violation of the prohibition on competitive activity in the Shareholders Agreement would be devastating to PAI and the other Shareholder.

34. Accordingly, the Shareholders Agreement, at Section 7.5(b) states as follows:

Each of the parties to this Agreement acknowledges and agrees that any breach of Section 7.5(a) would likely cause substantial and irreparable harm to the Corporation and its business for which monetary damages would be an insufficient remedy and therefore agrees that, in addition to any other right or remedy as the Corporation or Shareholder may have under this Agreement or under applicable Law with respect to any such breach, each party to this Agreement, shall, with respect to any such breach,

be entitled to preliminary, temporary, and permanent injunctive relief with respect to any such breach or threatened breach of Section 7.5(a), all without the necessity of posting any bond or other security therefor or proving actual damages.

**DR. PLOCHARCZYK'S EFFORTS TO DISMANTLE PAI  
AND TAKE ITS MAIN CLIENT**

35. PAI, through Dr. Sudilovsky, has been the exclusive provider of pathology services to CMC since 2008.

36. Dr. Sudilovsky, through PAI, successfully served as the medical director for the CMC laboratory from 2007 until October 2020.

37. In 2020, CMC management and Dr. Plocharczyk requested that Dr. Sudilovsky relinquish the medical director position to Dr. Plocharczyk and that Dr. Sudilovsky and Dr. Plocharczyk rotate as medical director for CMC on a three years basis.

38. Dr. Sudilovsky agreed to this arrangement and effective October 1, 2020 Dr. Plocharczyk became the medical director for CMC.

39. In January 2021, Dr. Plocharczyk offered to purchase all of Dr. Sudilovsky's Shares in PAI.

40. Dr. Sudilovsky rejected Dr. Plocharczyk's offer to purchase his Shares.

41. Dr. Plocharczyk ceased communicating with Dr. Sudilovsky on routine matters for seemingly no reason in 2020 and continuing through 2021.

42. In March 2021, Dr. Plocharczyk commenced a Petition to dissolve PAI (the "Dissolution Proceeding"). That proceeding is pending in Tompkins County, bearing Index No. EF2021-0163.

43. Dr. Plocharczyk notified CMC of the fact that she filed a Petition for Dissolution.

44. Shortly after the Petition for Dissolution was filed, CMC sent a letter to PAI notifying it that CMC intended to terminate the Exclusive Pathology Agreement with PAI due to the fact that a Petition for Dissolution had been filed.

45. Notably, there is nothing in the Exclusive Pathology Agreement that permits termination simply because a Petition for Dissolution has been filed.

46. Dr. Sudilovsky attempted to discuss the retention of counsel to explore CMC's anticipated termination of the Exclusive Pathology Agreement, but Dr. Plocharczyk has not responded.

47. Meanwhile, Dr. Plocharczyk sought, and was awarded, a contract with CMC under which a newly-formed entity controlled by her is performing the pathology services that had previously been performed by PAI.

48. Dr. Plocharczyk is therefore directly competing with PAI and solicited away PAI's main client in order to induce that client to alter its business dealings with PAI.

49. Dr. Plocharczyk communicated with CMC in order to arrange for CMC to terminate its contracts with PAI so that Dr. Plocharczyk could execute a contract to perform the same pathology services for CMC that PAI currently provides, but to the exclusion of PAI and Dr. Sudilovsky.

50. On average, more than 80% of PAI's annual revenue is derived from the Exclusive Pathology Agreement with CMC.

51. More importantly, CMC and the Cayuga Area Physicians Alliance are equal partners in the Cayuga Area Plan ("CAP"), a physician-hospital organization which ensures that referrals stay within the system. This system ensures that virtually all physicians in Tompkins,

Schuyler and Cortland counties refer all of their pathology specimens to either CMC or Schuyler Hospital<sup>1</sup>.

52. It would be impossible to operate a pathology practice in the same geographic region as CAP without being able to operate at CMC.

53. Thus, when Dr. Plocharczyk took over the operation of the pathology lab at CMC to the exclusion of PAI and Dr. Sudilovsky, it became impossible for PAI to exist or for Dr. Sudilovsky to practice pathology in the same geographic area.

54. Thus, the vast majority of the revenue for PAI comes from CMC.

55. Dr. Plocharczyk's success in inducing CMC to enter into a contract to perform pathology services with her to the exclusion of PAI and Dr. Sudilovsky was devastating to both PAI and Dr. Sudilovsky.

56. PAI and Dr. Sudilovsky have been irreparably harmed by Dr. Plocharczyk's inducing CMC to terminate its contracts with PAI and enter into a new agreement with Dr. Plocharczyk to provide pathology services, to the exclusion of both PAI and Dr. Sudilovsky.

57. Dr. Sudilovsky has lived in the Ithaca area since 2005, and has family and community ties to the Ithaca area. If PAI were to cease conducting business, he would have to seek employment in a different geographic location.

58. Dr. Sudilovsky is going through a divorce, and has two children who reside in Tompkins County.

59. If Dr. Sudilovsky were required to leave the Ithaca area in order to find other suitable employment, it would likely mean that he has to live in a different geographic region than his children, which would be an extreme hardship on his family.

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<sup>1</sup> There is another health care system (The Guthrie Clinic) that operates in Tompkins County. However, Guthrie does not have a pathology lab in Ithaca.



60. Dr. Plocharczyk is fully aware of the fact that there is a Shareholders' Agreement that prohibits her from soliciting PAI's client and patients as well as prohibiting her from competing with PAI's business.

61. Dr. Plocharczyk knows that her actions are in direct contravention of the Shareholders' Agreement.

62. The actions of Dr. Plocharczyk in inducing CMC to terminate its contract with PAI and enter into an agreement with her, to the exclusion of PAI and Dr. Sudilovsky is a clear breach of the Shareholders Agreement.

63. Furthermore, Dr. Plocharczyk's actions are an egregious breach of the fiduciary duty that she owes to Dr. Sudilovsky as a 50% Shareholder of PAI along with Dr. Sudilovsky.

**DR. PLOCHARCZYK'S REFUSAL TO COMPLY WITH  
THE SHARE PURCHASE PROVISIONS OF THE CONTRACT**

64. Section 3.1(c) of the Shareholder Agreement states that "[a] Shareholder's filing of a petition for judicial dissolution of the Corporation in any court shall be deemed to be an offer by that Shareholder of all of his or her Shares for purchase by the Corporation or the other Shareholders." Shareholder Agreement § 3.1(c).

65. Under the plain language of the Shareholder Agreement Dr. Plocharczyk's unilateral commencement of the Dissolution Proceeding triggered the provision set forth in Section 3.1(c) of the Shareholder Agreement (hereinafter the "Buyout Provision").

66. Pursuant to the Buyout Provision, upon commencement of a dissolution proceeding, "the Corporation and the other Shareholders shall have options . . . to purchase any or all of such Shareholder's Shares in the manner described in Section 3.2." *Id.*

67. Dr. Sudilovsky exercised his rights as a Shareholder under this provision following Dr. Plocharczyk's commencement of the Dissolution Proceeding.

68. Specifically, Dr. Sudilovsky complied with the procedures and timelines set forth in Section 3.2 of the Shareholder Agreement in order to purchase one of Dr. Plocharczyk's shares in PAI.

69. Following the required valuation of the share being purchased, Dr. Sudilovsky, through his counsel, delivered to counsel for Defendant on August 12, 2021 all necessary documentation and full payment for the share being purchased (the "August 12 Correspondence").

70. The payment included in the August 12 Correspondence has not been returned to Dr. Sudilovsky or his counsel.

71. Following the August 12 Correspondence, Dr. Sudilovsky's counsel, on numerous occasions, exchanged communications with counsel for Dr. Plocharczyk concerning the share purchase.

72. Notwithstanding multiple assurances from Dr. Plocharczyk's counsel that the purchased share was in the process of being provided, and/or would be sent to Dr. Sudilovsky shortly, delivery of the share has not occurred.

73. Dr. Sudilovsky has no remedy in law for Dr. Plocharczyk's continued breach of the Shareholder Agreement in this regard, as the relevant provisions entitling Dr. Sudilovsky to purchase any or all of Dr. Plocharczyk's shares in PAI cannot be effectuated by substituting a payment of money.

74. As the foregoing demonstrates, Dr. Plocharczyk is in breach of her obligations under the Shareholder Agreement, and Dr. Sudilovsky is entitled to an order directing specific

performance of the contract—to wit, immediate provision of the withheld share to Dr. Sudilovsky.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)**

75. Plaintiffs repeat and reallege each and every paragraph above as if fully set forth herein.

76. Dr. Plocharczyk and Dr. Sudilovsky are parties to the Shareholders' Agreement, a copy of which is attached hereto as Exhibit E.

77. At all times relevant herein, Dr. Sudilovsky has complied with the terms of the Shareholders' Agreement.

78. The Shareholders' Agreement prohibits each of the Shareholders from competing with PAI or inducing or attempting to influence any third-party to terminate, reduce or adversely alter their business dealings with PAI.

79. Dr. Plocharczyk's actions are a direct and blatant violation of Section 7.5(a) of the Shareholders Agreement.

80. As a result of Dr. Plocharczyk entering into an agreement with CMC to provide pathology services to the exclusion of PAI and Dr. Sudilovsky, both Dr. Sudilovsky and PAI have suffered substantial harm.

81. As a result of Dr. Plocharczyk's actions or threatened actions, PAI and Dr. Sudilovsky are entitled to a temporary, preliminary and permanent injunction prohibiting Dr. Plocharczyk from violating the terms of the Shareholders Agreement.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Breach of Fiduciary Duty)**

82. Plaintiffs repeat and reallege each and every paragraph above as if fully set forth herein.

83. As 50% Shareholders of PAI, Dr. Plocharczyk and Dr. Sudilovsky are in a fiduciary relationship with one another.

84. As fiduciaries, each owes the other the duty of the utmost fidelity in their business dealings regarding PAI.

85. Dr. Plocharczyk's actions in failing to notify Dr. Sudilovsky of the fact that CMC asked her to submit a proposal to provide pathology services to CMC, her inducement of CMC to alter its business relationship with PAI, and her entering into an agreement with CMC to the exclusion of PAI and Dr. Sudilovsky all constitute a breach of her fiduciary duties that she owes to Dr. Sudilovsky.

86. As a result of Dr. Plocharczyk's action or threatened actions, Dr. Sudilovsky will be irreparably harmed.

87. Dr. Sudilovsky is entitled to a temporary, preliminary and permanent injunction prohibiting Dr. Plocharczyk from continuing to violate her fiduciary duties by performing pathology services in violation of the Shareholders Agreement.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Tortious Interference with Contract)**

88. Plaintiffs repeat and reallege each and every paragraph above as if fully set forth herein.

89. Dr. Plocharczyk is fully aware of the contracts between PAI and its clients, including CMC and Schuyler Hospital.

90. Dr. Plocharczyk is also fully aware that the Shareholders Agreement prohibits her from competing with PAI and from soliciting or attempting to induce any of PAI's clients or patients from altering their business relationship with PAI.

91. Dr. Plocharczyk's actions in inducing CMC to enter into an agreement to perform pathology services with her to the exclusion of PAI and Dr. Sudilovsky resulted in a breach of the contract between PAI and CMC, and caused PAI damages.

92. Dr. Plocharczyk's actions tortiously interfered with PAI's contracts with CMC.

93. Due to Dr. Plocharczyk's tortious interference with the contract between PAI and CMC, PAI has or will suffer great monetary damages.

94. Given that Dr. Plocharczyk is a 50% shareholder of PAI, presenting this cause of action to the directors of PAI is futile, as Dr. Plocharczyk would not agree to bring this claim against herself.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Specific Performance)**

95. Plaintiffs repeat and reallege each and every paragraph above as if fully set forth herein.

96. Dr. Plocharczyk and Dr. Sudilovsky are parties to the Shareholders' Agreement.

97. Dr. Plocharczyk's commencement of the Dissolution Proceeding triggered the provisions set forth in Section 3.1(c) of the Shareholder Agreement.

98. Pursuant to that Section, Dr. Sudilovsky duly exercised his rights as a Shareholder to purchase one share from Dr. Plocharczyk.

99. Specifically, Dr. Sudilovsky followed the procedures set forth in the Shareholder Agreement to purchase one share from Dr. Plocharczyk, and made payment for one share on or about August 12, 2021.

100. As such, Dr. Sudilovsky has substantially performed his contractual obligations and stands willing and able to perform his remaining obligations under the Contract.

101. Dr. Plocharczyk is able to convey the purchased share to Dr. Sudilovsky.

102. Notwithstanding this, Dr. Plocharczyk has failed to convey the share to Dr. Sudilovsky as she is obligated to do under the plain language of the Contract.

PAI is a closely held corporation, and therefore, its stock is unique, and therefore, Dr. Sudilovsky has to adequate remedy at law.

103. Dr. Sudilovsky is therefore entitled to an order directing specific performance of the Contract—namely, mandating that Dr. Plocharczyk immediately convey the purchased share to Dr. Sudilovsky.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter a judgment in favor of the Plaintiffs for the following:

- a) Entering a temporary, preliminary and permanent injunction prohibiting Dr. Plocharczyk from soliciting or proposing to conduct pathology services directly for CMC in violation of the Shareholders Agreement; and
- b) Temporarily, preliminarily and permanently enjoining and restraining Dr. Plocharczyk from performing any pathology services for CMC through any person or entity other than PAI; and
- c) Money damages in an amount to be determined, but upon information and belief, shall be not less than \$1,000,000.00 in favor of PAI and Dr. Sudilovsky;
- d) Directing Dr. Plocharczyk to convey to Dr. Sudilovsky, without delay, the share of PAI that Dr. Sudilovsky has purchased pursuant to Section 3.1(c) of the Contract; and

e) Such other and further relief as this Court shall deem just and necessary.

DATED: December 28, 2022  
Rochester, New York

WOODS OVIATT GILMAN LLP

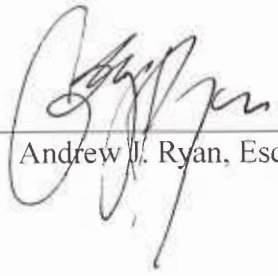
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**ATTORNEY VERIFICATION**

STATE OF NEW YORK)  
COUNTY OF MONROE ) ss:

**Andrew J. Ryan, Esq.**, affirms that the following statements are true, under penalties of perjury. Deponent is Plaintiffs' attorney in this action, Deponent has read the foregoing Verified Amended Complaint and knows the contents thereof, that the same are true to Deponent's own knowledge, except as to the matters stated to be alleged on information and belief, that as to those matters, Deponent believes them to be true, that the grounds for Deponent's beliefs are derived from conversations and correspondence from Plaintiff, the reason why this verification is made by Deponent and not by the Plaintiff is that Plaintiff does not reside in Monroe County, New York, which is the county where Deponent has an office for the practice of law.

Dated: December 28, 2022

  
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Andrew J. Ryan, Esq.