

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ASSOCIATION FOR MOLECULAR PATHOLOGY;  
AMERICAN COLLEGE OF MEDICAL GENETICS;  
AMERICAN SOCIETY FOR CLINICAL PATHOLOGY;  
COLLEGE OF AMERICAN PATHOLOGISTS; HAIG  
KAZAZIAN, MD; ARUPA GANGULY, PhD; WENDY  
CHUNG, MD, PhD; HARRY OSTRER, MD; DAVID  
LEDBETTER, PhD; STEPHEN WARREN, PhD; ELLEN  
MATLOFF, M.S.; ELSA REICH, M.S.; BREAST CANCER  
ACTION; BOSTON WOMEN'S HEALTH BOOK  
COLLECTIVE; LISBETH CERIANI; RUNI LIMARY;  
GENAE GIRARD; PATRICE FORTUNE; VICKY  
THOMASON; KATHLEEN RAKER,

Plaintiffs,

-against-

UNITED STATES PATENT AND TRADEMARK OFFICE;  
MYRIAD GENETICS; LORRIS BETZ, ROGER BOYER,  
JACK BRITTAIN, ARNOLD B. COMBE, RAYMOND  
GESTELAND, JAMES U. JENSEN, JOHN KENDALL  
MORRIS, THOMAS PARKS, DAVID W. PERSHING, and  
MICHAEL K. YOUNG, in their official capacity as Directors of  
the University of Utah Research Foundation,

Defendants.

No. 09 Civ. 4515 (RWS)

ECF Case

**DECLARATION OF  
TODD OGAARD**

I, Todd Ogaard, declare under penalty of perjury:

1. I am Vice President of Customer Services at Myriad Genetic Laboratories, Inc. ("Myriad"). I also oversee Myriad's billing department. These departments comprise about 150 individuals who are responsible for Myriad's interaction with the doctors who order our tests and their patients. We also administer Myriad's programs aimed at helping low-income patients get testing.

2. The primary responsibility of the 150 people employed in Myriad's customer service and billing departments helping patients receive the insurance benefits to which they are entitled under their insurance plans. As soon as a test request form is received for a patient, these professionals assess that patient's insurance coverage and, if necessary, tailor payment arrangements to each patient. If a payor determines that the BRCA*Analysis*<sup>®</sup> test is not a covered service, Myriad's billing associates will often help the patient appeal this determination.

3. Due to our employees' efforts in this regard, over 90% of the tests we perform are covered by insurance at over 90% of the test cost. As a result, the weighted average out-of-pocket cost to each patient is less than \$100.

4. Virtually from the beginning Myriad has had a financial assistance program aimed at helping low-income, uninsured patients get the testing they need. These programs, modeled on those established by pharmaceutical companies, started at Myriad in April of 1996. Though rigorous statistics were not kept in the early days, between June 1, 2005 and the present approximately 3,000 patients have received free BRCA testing under this program (about 55 tests a month).

5. Patients are eligible for free testing if they meet the following criteria:

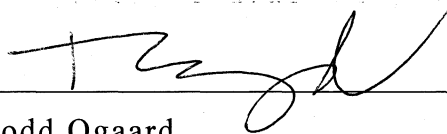
- a. The patient is not a recipient of government-funded healthcare programs (i.e., Medicaid, Medicare), due to limitations on free services under federal law, and has no third-party insurance.
- b. The patient's gross annual household income does not exceed 1.5 times the poverty guidelines set by the U.S. Department of Health and Human Services (beginning January 1, 2010, this cut-off will increase to 2 times the poverty guidelines).

c. The patient meets specific medical criteria indicating BRCA testing is appropriate.

6. Myriad also provides free testing to independent non-profit institutions whose goal is assisting patients who cannot afford medical care. For example, in 2009 Myriad began granting free BRCA*Analysis*<sup>®</sup> testing to The Cancer Resource Foundation (CRF) to be distributed to needy Massachusetts patients at CRF's discretion (i.e., based upon medical and financial criteria of CRF's choice). More information on CRF can be found at their website:

<http://www.breastcancerma.org/helping-hand/#genetic>.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Todd Ogaard

Executed on 12/22, 2009

**CERTIFICATE OF SERVICE**

This is to certify that on December 23, 2009, a true and correct copy of the foregoing document has been served on all counsel of record via the court's ECF system.

/s/ Brian M. Poissant

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Brian M. Poissant