

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CATHERINE JUAREZ,

Plaintiff,

No. 1:19-cv-521

**THE BOARD OF REGENTS OF THE UNIVERSITY
OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, INC. and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20**

Defendants.

NOTICE OF REMOVAL

Defendants The Board of Regents of the University of New Mexico, University of New Mexico Health Sciences Center, University of New Mexico Medical Group, Inc., Maxine Dorin, M.D., Betsy Taylor, M.D., and Meghan Beddow, M.D. (collectively “Defendants”), through counsel of record, Riley, Shane & Keller, P.A. (Mark J. Riley and D. Chet Alderete), state the following:

1. Pursuant to 28 U.S.C. §§ 1331, 1441, 1443, 1446, Defendants give Notice of Removal to this Court of all counts and claims asserted by Plaintiff in the civil action filed on February 11, 2019 in the Second Judicial District Court for the State of New Mexico, County of Bernalillo, Case No. D-202-CV-2019-01169, styled *Catherine Juarez v. The Board of Regents of the University of New Mexico et al.* As grounds for removal, Defendants state the following:

2. The Complaint for Personal Injuries from Medical Negligence was filed in the Second Judicial District Court for the State of New Mexico, County of Bernalillo on February 11, 2019.

3. The First Amended Complaint for Breach of Contract, Fraud, Personal Injuries from Medical Negligence, Intentional Infliction of Emotional Distress, Negligent Misrepresentations, Res Ipsa Loquitur, Violations of the New Mexico Unfair Practices Act and Violations of 42 U.S.C. § 1983 was filed with the Second Judicial District Court of New Mexico on May 10, 2019. A copy of the First Amended Complaint is attached as **Exhibit A**.

4. This Notice of Removal is timely filed within thirty days of the filing of the First Amended Complaint. *See* 28 U.S.C. § 1446 (b); *see also* *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999) (holding that “a named defendant’s time to remove is triggered by the simultaneous service of the summons and complaint . . . but not by mere receipt of the complaint unattended by any formal service.”).

5. The claims asserted against Defendants in this case are removable, and subject to the jurisdiction of this Court pursuant to 28 U.S.C. § 1331 which vests this Court with original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States. A federal question is apparent on the face of the First Amended Complaint because Plaintiff asserted claims arising out of the Constitution and laws of the United States brought pursuant to 42 U.S.C. § 1983. *See* First Amended Complaint, Count 7 Violations of Catherine’s Civil Rights under 42 U.S.C. § 1983 by Taylor and Beddow.

6. There is an actual controversy between the parties.

7. All Defendants are represented by the same counsel, Riley, Shane & Keller, P.A. (Mark J. Riley and D. Chet Alderete) and hereby unanimously consent to the removal of this

case to the United States District Court for the District of New Mexico. *See* Notice of Consent for Removal attached hereto.

8. Defendants also attach a copy of the www.nmcourts.gov court docket as of June 6, 2019 pursuant to D.N.M.LR-Civ. 81.1(a). *See* **Exhibit B**.

9. As required by D.N.M.LR-Civ. 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, copies of all pleadings filed in the state court action are attached hereto as **Exhibit C**.

10. Pursuant to 28 U.S.C. § 1446(d), written notice of removal was given to all adverse parties and a copy of this Notice of Removal was filed with the clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico.

11. Defendants waive their Eleventh Amendment immunity.

WHEREFORE, the removing Defendants respectfully request that this Court remove this action from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to the United States District Court for the District of New Mexico.

Respectfully submitted,

RILEY, SHANE & KELLER, P.A.

By:



MARK J. RILEY
DANIEL "CHET" ALDERETE
Attorneys for Defendants
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of June 2019, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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By: /s/


MARK J. RILEY

DANIEL "CHET" ALDERETE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CATHERINE JUAREZ,

Plaintiff,

No. 1:19-cv-521

**THE BOARD OF REGENTS OF THE UNIVERSITY
OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, INC. and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20**

Defendants.

NOTICE OF CONSENT FOR REMOVAL

Defendants University of New Mexico Medical Group, Inc. Maxine Dorin, M.D, Betsy Taylor, M.D. and Meghan Beddow, M.D., by and through counsel of record Riley, Shane & Keller, P.A. (Mark J. Riley and D. Chet Alderete), pursuant to 28 U.S.C.S. § 1446, hereby notifies this Court that after consultation, each consent to the removal of the lawsuit entitled *Catherine Juarez v. The Board of Regents of the University of New Mexico and University of New Mexico Health Sciences Center, and University of New Mexico Medical Group, Inc. and Maxine Dorin, M.D. and Betsy Taylor, M.D. and Meghan Beddow, M.D. and John and Jane Does 1-20*, Case No. D-202-CV-2019-01169 from the Second Judicial District Court of Bernalillo County, New Mexico to the United States District Court for the District of New Mexico as noted in the Notice of Removal filed by Defendant Board of Regents of the University of New Mexico. The University of New

Mexico Health Sciences Center is not a separate legal entity but rather an organizational structure under the authority of the Board of Regents of the University of New Mexico.

Dated this day of June 6, 2019

RILEY, SHANE & KELLER, P.A.

By: 

MARK J. RILEY

D. CHET ALDERETE

Counsel for Defendants

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EXHIBITS “A” through “C”



**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
5/10/2019 2:54 PM
James A. Noel
CLERK OF THE COURT
Dora Bozovic**

CATHERINE JUAREZ,

Plaintiff,

v.

Case No. D-202-CV-2019-01169

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20**

Defendants.

**FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT, FRAUD, PERSONAL INJURIES
FROM MEDICAL NEGLIGENCE, INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS, NEGLIGENT MISREPRESENTATIONS,
RES IPSA LOQUITUR,
VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT
AND VIOLATIONS OF 42 U.S.C. § 1983**

COMES NOW Plaintiff, Catherine Juarez, by and through her counsel of record Sharp Law Firm (Lynn S. Sharp and Maria M. Siemel) and for her Complaint for Damages based upon various counts, states, asserts, and alleges as follow:

Parties, Jurisdiction and Venue

1. The subject matter of this lawsuit is medical care and operative services provided to Plaintiff Catherine Juarez (hereinafter Catherine) by Defendants, as well as the attendant misrepresentations, breach of contract, fraud, intentional infliction of emotional distress, battery, violations of the New Mexico Unfair Practices Act, and Violations of 42 U.S.C. § 1983.

2. The Plaintiff Catherine Juarez (hereinafter Catherine) is a resident of Sandoval County, New Mexico.

3. The defendant Board of Regents of the University of New Mexico (“Board of Regents”) is an entity established by the New Mexico Constitution to govern, operate, and control the University of New Mexico (hereinafter UNM) an educational entity established by the New Mexico Constitution, principally located in Bernalillo County, New Mexico. The Board of Regents and UNM own, operate, and control UNM Health Sciences Center, which includes UNM Hospital (hereinafter UNMH), which is a general hospital open to members of the public and which provides general emergency, medical and surgical care, including care in the specialized field of OB/GYN.

4. The Board of Regents and UNM also own, operate and direct the UNM Medical Group, Inc. (hereinafter “Group”), which is a not-for-profit corporation that was formed in 2007 and has brought together more than 1,100 clinical practitioners in 152 specialties. The Group includes faculty at the University of New Mexico School of Medicine and serves as the exclusive caregivers to the state’s only academic medical center, University of New Mexico Hospital. The medical group operates 14 clinics serving about 45,000 patients and provides care at the hospital’s 76 clinics.

5. The principal offices of the Board of Regents, UNMH, and the Group (hereinafter Defendants) are in Bernalillo County, New Mexico.

6. Pursuant to NMSA 41-4-18 B, this matter is proper in this venue based upon the statutory directive that “venue for all other claims pursuant to the Tort Claims Act, shall be in the county in which the principal offices of the governing body of the local public body are located.”

7. The Defendant doctors Maxine Dorin, M.D., Betsy Taylor, M.D., and Meghan Beddow, M.D. (hereinafter Defendant Doctors) were employees of Defendants acting in the course and scope of their official duties as licensed medical physician employees at all times at issue in this matter. Upon information and belief, Defendant Doctors reside or practice in Bernalillo County, New Mexico.

8. The Defendants’ staff employees, the John and Jane Does yet to be determined and named (hereinafter Defendant Staff) including operating room staff, operating room schedulers, and others who were employees or agents of Defendants working within the scope and course of their official employment at all times at issue in this matter. Upon information and belief, Defendant Staff reside or practice or work in Albuquerque, Bernalillo County, New Mexico.

9. Venue is proper in this action.

10. This Honorable Court has subject matter jurisdiction over this case.

11. This Honorable Court has personal jurisdiction over the Parties to this action.

Facts Common to All Counts

12. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

13. Prior to her care by all Defendants, Catherine had a condition known as Polycystic Ovary Syndrome (hereinafter PCOS).

14. Catherine had been on birth control medications for over 25 years in an attempt to control her PCOS. She was also on the medication metformin on and off, as her body would tolerate, to treat the insulin resistance caused by the PCOS. She also developed a metabolic syndrome which then contributed to a host of other health issues.

15. Prior to her care by Defendants and Defendant Doctors, Catherine had always been active, even playing competitive soccer. As the PCOS progressed it caused problems of weight gain which further aggravated the insulin resistance, thereby placing her at risk of developing diabetes.

16. Catherine discussed with her primary care provider the option of a hysterectomy and removal of her ovaries as a means of addressing the PCOS. Surgical Oophorectomy (surgical removal of the ovaries) is a recognized treatment for PCOS. This surgery was discussed given the absence of improvement in her quality of life, weight gain, and health issues absent this surgical intervention.

17. After researching providers to remove her ovaries and to provide a course of endocrinology treatment for her in conjunction with the removal of her ovaries, Catherine selected Maxine Dorin, M.D. (hereinafter Dorin) based on her reputation and her extensive experience with PCOS and surgical removal of the ovaries to treat PCOS.

18. Because PCOS creates risk of hypertension, obesity, and increased risk of heart disease Catherine continues to suffer from the deleterious effects of PCOS, including but not limited to weight gain, hair growth, and increased blood pressure/hypertension because the Defendants, Defendant Doctors and Defendant Staff failed to perform the surgery she contracted for.

19. Additionally, in reliance upon Dorin's representations that Dorin herself was going to remove Catherine's ovaries, Catherine accepted a course of additional hormones before the surgery to prevent surgical menopause. Because Dorin failed to remove Catherine's ovaries, (failed to perform the surgery for which Catherine had contracted with Dorin), this course of additional hormones, in the absence of the oophorectomy, caused Catherine to suffer an excess hormone condition causing her to become depressed and anxious, to suffer from random and uncontrollable bouts of crying, and other types of emotional regulation issues that she did not have prior to Dorin's breach of contract, medical negligence, and other torts.

20. Catherine met with Dorin beginning on May 31, 2018 for several visits and Catherine repeatedly expressed her desire for a hysterectomy **with removal of both ovaries at the time of the surgery**. Dorin agreed with this plan and represented to Catherine that she, Dorin, would perform the procedure unless she was unable to do so and that this procedure would be performed on Catherine. There is no evidence that Dorin was unable to perform the agreed upon surgical procedure. Dorin fully understood, and confirmed with Catherine, that removal of the ovaries would not only be part of the surgery but was the primary purpose for the surgery. This plan and contract

between Dorin and Catherine was agreed upon and confirmed in writing, being then signed and executed by both Dorin and Catherine.

21. After the surgery, which was not performed by Dorin as agreed upon, and where the ovaries were not removed as agreed upon, Dorin and the other Defendants billed and charged Catherine for the full surgery which included removal of ovaries, and Catherine through her health insurance paid Dorin and the Defendants for those billed charges. Dorin and the other Defendants billed Catherine for, and were actually paid for, a surgical procedure which was not done, and which Dorin and the other Defendants knew had not been done.

22. Catherine and Dorin and the other Defendants originally scheduled the surgery for September 29, 2018. In reliance upon that, Catherine prepared all of her FMLA paperwork and arranged for family members to take off of work on that date and for time following that date, all of which was a substantial effort by Catherine.

23. At the H&P Outpatient visit on September 4, 2018, however, Dorin informed Catherine that she had decided to go out of town on the date the surgery had been scheduled and agreed upon, and Dorin was going to simply cancel Catherine's September 29, 2018 surgery date, despite all of the effort Catherine had expended to arrange for the surgery on the agreed upon date.

24. Eventually, Catherine was able to obtain Dorin's express agreement to have her surgery performed by Dorin on September 21, 2018, before Dorin left town.

25. On September 4, 2018, Catherine was also presented with a Consent for Surgery contract that offered, among other things, that Dorin would perform the surgery to remove her ovaries unless Dorin was "*unable to*". Despite that component of offer

and acceptance, Dorin did not perform the September 21, 2018 surgery (hereinafter the surgery). There is no indication that Dorin was “unable to” perform this surgery. In fact it was Dorin who fraudulently created and charted the intentionally false Operative Report for the surgery.

26. Defendant Dorin, who is the party with superior knowledge of the surgery and the operative process, discussed and offered the terms of the Consent for Surgery Contract with Catherine. Both Dorin and Catherine agreed to the terms of the Consent for Surgery Contract, offer and acceptance having been completed, and both Dorin and Catherine signed this written contract.

27. In reliance upon Defendant Dorin’s representations that she would be performing her surgery and/or be present and supervising the performance of certain portions of her surgery, Catherine accepted the terms of the Consent For Surgery contract which Dorin presented to her on September 4, 2018 to formalize and document, in writing, this contractual agreement.

28. On September 21, 2018, Catherine presented herself to UNMH for the agreed upon surgery, now relying upon the Consent For Surgery Contract she entered into with Dorin, which expressly stated that the oophorectomy “**will be performed on you**” and would be performed by Dorin unless Dorin was unable to.

29. The Anesthesia Pre-Op Note documented a bilateral salpingectomy and oophorectomy, “**BSO**”, with the “**O**” signifying removal of the ovaries, as the procedure to be performed.

30. Despite her knowing and reckless false representations to Catherine that she would be present at, perform and/or supervise Catherine’s surgery, it appears from

the medical records that Dorin did not perform or attend Catherine's September 21, 2018 surgery and that Catherine's surgical operation was actually attended and performed by Defendant Taylor and Defendant Beddow. Defendant Taylor and Defendant Beddow did not have Catherine's permission to touch her or perform surgery on her and, therefore, committed a battery upon Catherine.

31. Not only did Defendant Taylor and Defendant Beddow commit a battery upon Catherine, but in doing so they violated a constitutionally protected right of Catherine and did so under color of law.

32. In flagrant breach of the Consent For Surgery contract with Catherine, Dorin failed to perform or attend Catherine's September 21, 2018 procedure to remove her ovaries, and Defendant Taylor (hereinafter Taylor) and Defendant Beddow (hereinafter Beddow) failed to remove Catherine's ovaries when they performed the surgery.

33. This is supported by the subsequent actions of Dorin when she came into Catherine's room after the operation, apologized curtly, and stated that "*we forgot to take out your ovaries.*" This statement created yet another false and fraudulent representation by implying that Dorin had actually attended Catherine's surgery.

34. After that one single post-op visit to Catherine's room, neither Dorin nor any of the Defendant Doctors ever attempted to see or talk to Catherine again. To this date, Catherine has never met or been introduced to Taylor or Beddow.

35. The Anesthesia Report for Catherine's surgery does not document a time-out by the surgical team, nor does it indicate that Dorin was present at the surgery.

36. Dorin's Operative Report, in contrast, intentionally and fraudulently states that a time-out was taken at the beginning of Catherine's procedure; that Dorin was present during the procedure and that Catherine's ovaries were removed and submitted to Pathology. Dorin's Operative Report is, therefore, an intentionally false and fraudulent misrepresentation.

37. The Pathology Report for Catherine's surgery confirms that her ovaries were not to submitted to Pathology as fraudulently charted by Dorin. Further, Catherine was denied access to her pathology report for at least two months after the surgery and was only able to obtain them through the assistance of her counsel.

38. When Catherine requested her medical records, Dorin, Taylor and all other Defendants intentionally withheld the Pathology Report from the records that were given to Catherine. The Pathology Report was not produced until inside counsel for UNMH was contacted by Catherine's attorneys in this matter to obtain that report. This was an attempt by all Defendants to further fraudulently conceal their negligence and other torts from Catherine.

39. As a result of this gross error by the Defendants, the Defendant Doctors, and the Defendant Staff, Catherine is not only right back where she started from the standpoint of still having her ovaries and PCOS health issues, but she is instead in much worse condition than when she started this process. The pre-operative hormone management to prepare for the removal of her ovaries and prevent surgically induced menopause, has now placed her in an even more precarious position as to this condition than before the surgery.

40. Catherine has suffered severe and ongoing injuries and damages as a result of the negligence of the Defendants, the battery by the Defendant Doctors, the violation of her civil rights by the Defendant Doctors, and the breach of contract by the Defendant Doctors and the Defendant Staff.

COUNT 1

Breach of Contract by Dorin and Taylor

41. After researching PCOS providers, Catherine decided that Dorin was the best provider for her PCOS and asked Dorin to treat her.

42. Dorin offered to treat Catherine's PCOS and as a part of that treatment offered and agreed to perform a bilateral Salpingectomy and Oophorectomy according to the terms of the September 4, 2018 Consent for Surgery Contract which was accepted by Catherine, agreed upon and signed by both Dorin and Catherine, and then this contract was neither modified nor repudiated by either party.

43. Dorin had originally scheduled Catherine's surgery for September 29, 2018 but then decided to leave town instead which required Catherine to reschedule the surgery even though Catherine had already relied upon the prior schedule, completed, submitted and obtained FMLA approval for leave, all based upon Dorin's original offer to perform the surgery on September 29, 2018.

44. Dorin breached her contractual duties and obligations to Catherine when she failed to perform, supervise and/or attend Catherine's September 21, 2018 RATLHBSO surgery.

45. Dorin intentionally, wantonly, maliciously, and with utter disregard for Catherine's health and safety, failed to remove Catherine's ovaries and thereby breached her Consent for Surgery contract with Catherine.

46. The contract executed by Dorin also makes the attending defendant physicians parties to that contract. One of the attending defendant physicians who was a party to that contract and who was bound and obligated by its terms is Taylor.

47. By failing to perform the removal of Catherine's ovaries and by failing to chart what actually happened during Catherine's surgery and instead fraudulently charting false statements in the chart, Taylor breached her contract with Catherine.

48. Dorin's and Taylor's breach of their contract with Catherine has damaged Catherine who continues to suffer from PCOS, who has suffered from emotional regulation damages caused by the hormone treatment she was given in reliance on having her ovaries removed and having the removal of her ovaries supervised by Dorin and /or by Taylor, and has suffered compensatory, direct, and consequential damages in an amount to be determined at trial. These damages are the direct and proximate result of Dorin's and Taylor's intentional breach of their contract with Catherine.

COUNT 2

Fraud and Fraudulent Misrepresentation

49. Dorin falsely represented to Catherine that Dorin would perform her surgery and/or would be present at Catherine's surgery supervising the performance of the removal of Catherine's ovaries.

50. The representation of this fact was false and Dorin knew it to be false but recklessly made the representation.

51. Dorin made this false representation to Catherine with the intent to deceive and induce Catherine to sign the September 4, 2018 Consent for Surgery contract and to have her surgery at Dorin's facility so that Dorin, Taylor, and all other Defendants could bill and charge, then collect, the monies that would be owed to all Defendants by Catherine.

52. Catherine did in fact rely upon Dorin's knowing or reckless fraudulent representations to Catherine, that she (Dorin) would perform or, at a minimum, would be present at and supervise, Catherine's surgery, and that this surgery would remove Catherine's ovaries.

53. Catherine relied upon these representations by Dorin to Catherine's detriment. If Catherine knew before entering into the Consent for Surgery contract of September 4, 2018, that Dorin would not be performing her surgery, and that her ovaries would not be removed with the surgery, Catherine would not have entered into this contract.

54. As a result of that reliance Catherine signed the Consent for Surgery contract, and then was damaged by Dorin's and Taylor's breach thereof. Despite Dorin's intentional failure to be present at, supervise and/or perform the removal of Catherine's ovaries, and Taylor's failure to remove the ovaries, Catherine was billed in full for the services of Dorin and Taylor. Such conduct constitutes Fraud and Deceit.

COUNT 3

Fraudulent Inducement by Dorin

55. With the intention of obtaining Catherine's agreement to the September 4, 2018, Consent For Surgery Contract, Dorin knowingly or recklessly misrepresented to

Catherine that she would perform and/or be present at and supervise Catherine's surgery to remove her ovaries, and that her ovaries would in fact be removed.

56. Catherine relied upon Dorin's superior knowledge as well as Dorin's knowing and reckless false representations to Catherine, and therefore agreed to, and signed, the Consent for Surgery contract to her detriment.

COUNT 4

Breach of Implied Warranty of Use of Reasonable Skill by Dorin and Taylor

57. Dorin and Taylor undertook to perform the surgical removal of Catherine's ovaries, fallopian tubes, and uterus, which requires skill and care, and special training and experience .

58. Dorin and Taylor were obligated to possess and apply the knowledge and to use the skill and care ordinarily used by a reasonably well qualified physicians in the same field of medicine and giving due consideration to the locality involved.

59. Dorin and Taylor breached their contract with Catherine and further breached the implied warranty of use of reasonable skill and care when they failed to remove Catherine's ovaries at her surgery.

COUNT 5

Breach of Duty of Good Faith and Fair Dealing by Dorin

60. Dorin intentionally failed to personally perform Catherine's surgery, and thereby withheld from Catherine the agreed upon benefits of the contract they had mutually agreed upon under the Consent for Surgery Contract of September 4, 2018.

61. Dorin intentionally failed to supervise Catherine's surgery, and thereby withheld the agreed upon benefits to Catherine of the contract they had mutually agreed upon under the Consent for Surgery Contract of September 4, 2018.

62. When Taylor intentionally failed to remove Catherine's ovaries during Catherine's surgery, she withheld from Catherine the agreed upon benefits of the Consent for Surgery Contract of September 4, 2018.

63. The acts and omissions of Dorin and Taylor at, and related to, Catherine's surgery to remove her ovaries breached the duty of good faith and fair dealing they owed Catherine.

COUNT 6

Spoliation of Evidence by Dorin and Taylor

64. After Catherine's September 21, 2018 surgery ended, Dorin and Taylor knew that there was a lawsuit or the potential of a lawsuit because they knew that they had failed to remove Catherine's ovaries, which was the primary purpose of that surgery, and that Taylor performed the surgery instead of Dorin.

65. Dorin intentionally dictated or created an operative note that indicated that a time-out had been taken pre-operatively in the operating room and that Catherine's ovaries had been submitted to pathology.

66. Even though Dorin knew that Catherine's ovaries had not been removed, Dorin allowed the falsified operative note stand and made no attempt to correct, revise, or add to it to reflect what had actually happened during the surgery.

67. Taylor knew that Catherine's ovaries had not been removed and she failed to make any charting or operative note regarding the surgery and what actually happened while Catherine was in the operating room.

68. Dorin's falsified operative note and Taylor's failure to create a correct operative note constitute the disposition, destruction, mutilation, significant falsification or alteration of potential material evidence.

69. The intent of Dorin's and Taylor's acts and omissions set out in the previous paragraphs of Count 6, was to disrupt or defeat Catherine's potential lawsuit against them.

70. Upon information and belief, Dorin and Taylor's disposition, destruction, falsification or alteration of the evidence has resulted in Catherine's inability to prove her case, especially as to what actually happened before, during, and after her surgery.

71. As a result of Dorin's and Taylor's disposition, destruction, falsification and/or alteration of evidence material to Catherine's claims against them, Catherine has suffered further damages and cannot prove her case on these issues.

COUNT 7

Violations of Catherine's Civil Rights under 42 U.S.C. § 1983 by Taylor and Beddow

72. Plaintiff incorporates herein all previously stated facts, allegations and assertions.

73. Taylor and Beddow are employees of a governmental entity, namely the entities identified in her Complaint.

74. Taylor and Beddow act in their official capacity as surgeons, professors, department heads, and in other supervisory capacities, all doing so under color of law.

75. Catherine has a constitutional right not to have her physical integrity violated without actual, knowing and informed consent.

76. At no time did Catherine consent to Taylor or Beddow touching her, performing any surgery on her, or providing any other medical treatment to her.

77. At the time of Catherine's surgery, it had been long and clearly established that a person, such as Catherine, had a constitutionally protected right to her bodily integrity. A reasonable person in Taylor or Beddow's position would have known that Catherine had a constitutionally protected right to privacy and to her physical integrity, and that such would be violated by performing surgery on her without her consent.

78. The contract Catherine signed consented to allow Dorin, and Dorin alone, to perform the September 21, 2018 surgery on her.

79. Catherine's September 21, 2018 surgery was performed by Taylor and/or Beddow, in their official capacity and under color of law, without Catherine's consent, in violation of her constitutional right to her privacy and to her physical integrity, and constituted a battery upon Catherine.

80. As a result of Taylor and Beddow's violation of Catherine's right to privacy and to her physical integrity, which occurred when they performed surgery on Catherine without her consent, Catherine has suffered compensatory damages.

81. Furthermore, Taylor and Beddow's willful violation of Catherine's constitutional rights, warrants the award of punitive damages against them, and in amounts to be determined at trial.

Count 8

Battery on Catherine by Taylor and Beddow

82. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

83. When Taylor and Beddow performed surgery on Catherine without Catherine's consent and authorization to their performance of that surgery, they committed a battery on Catherine.

84. Catherine was damaged by Taylor and Beddow's unauthorized touching and battery, on September 21, 2018.

Count 9

Medical Negligence by Dorin, Taylor, Beddow and All Other Defendants

85. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

86. In treating and operating upon their patient Catherine, the Defendant Doctors, as specialists in the field of OB/GYN were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified specialists of the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

87. In treating and operating upon their patient Catherine, the Defendants and the Defendant Staff and all of their other employees and agents of the Defendants, providing care as a hospital holding itself out as capable of providing services in the specialized field of OB/GYN surgery, were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified

specialty facilities and staff in the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

88. As a proximate result of the breach of their duty to Catherine, as set forth above, the Defendants, the Defendant Doctors, and the Defendant Staff proximately caused severe injury and suffering and other damages to Catherine, all as to be proven at trial.

COUNT 10

Gross Negligence by Dorin and Taylor

89. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

90. By the acts and omissions described herein, Dorin and Taylor demonstrated behavior toward Catherine that was malicious, willful, reckless, wanton, fraudulent, in bad faith, all of which was conduct in utter disregard for Catherine's safety and well-being.

91. As to those acts and omissions of gross negligence based upon breach of contract and other counts as set forth above, any restriction or prohibition as to punitive damages against Dorin and Taylor, individually, under the New Mexico Tort Claims Act do not apply.

92. Catherine is, therefore, entitled to an award for punitive damages against Dorin and Taylor all in an amount to be proved at trial.

COUNT 11

Intentional Infliction of Emotional Distress

93. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

94. The conduct of Dorin and Taylor as set forth in this Complaint, was extreme and outrageous under the circumstances.

95. By engaging in this conduct, Dorin and Taylor acted intentionally or recklessly.

96. This conduct by Dorin and Taylor is of a nature which goes beyond the bounds of common decency and is atrocious and intolerable to an ordinary person. It is of an intensity and duration that no ordinary person would be expected to tolerate it.

97. As a result of this conduct by Dorin and Taylor, Catherine experienced, and continues to experience, severe emotional distress.

COUNT 12

Negligent Misrepresentation

98. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

99. The conduct of Dorin and Taylor as set forth in this Complaint, constituted a negligent and material misrepresentation, and an untrue statement which Dorin and Taylor intended Catherine to rely on and upon which, in fact, Catherine did rely upon.

100. The negligent misrepresentations by Dorin and Taylor to Catherine were statements which Dorin and Taylor had no reasonable ground for believing that the statements they made were true.

101. As a result of the negligent misrepresentations of Dorin and Taylor, Catherine has suffered, and will continue to suffer, damages as will be proved at trial.

COUNT 13

Violations of the New Mexico Unfair Practices Act

102. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

103. Plaintiff Catherine Juarez, and Defendants Maxine Dorin and Betsy Taylor, meet the definition of a “person” under the New Mexico Unfair Practices Act [57-12-1, et seq. NMSA 1978] (hereinafter UPA).

104. Dorin and Taylor, through their acts, omissions, misrepresentations, fraud, deceit and other actions and conduct in this matter, have violated a number of the provisions of the UPA, and have engaged in and committed acts which have specifically been declared unlawful pursuant to the UPA, 57-12-2(D).

105. Dorin and Taylor, through their acts, omissions, misrepresentations, fraud, deceit and other actions and conduct in this matter, have committed acts which have specifically been declared as unconscionable trade practices under the UPA, 57-12-2(E).

106. Based upon the foregoing, Catherine is entitled to recover treble damages, costs and attorney’s fees against Dorin and Taylor.

COUNT 14

Res Ipsa Loquitur

107. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

108. The injury and damages to Catherine were proximately caused by the surgery on September 21, 2018, and the events leading up to and following said surgery, were Dorin's, Taylor's, Beddow's and all other Defendants' responsibility to manage and control.

109. The failure to remove Catherine's ovaries in the surgery of September 21, 2018, and the acts or omissions of all Defendants before and after the surgery, was of a kind which does not ordinarily occur in the absence of negligence. Dorin, Taylor, Beddow and all other Defendants were in actual control and supervision of that surgery and the events leading up to and following that surgery of September 21, 2018.

110. It can be inferred, therefore, that Dorin, Taylor, Beddow, and all other Defendants were negligent, and that Catherine's injuries and damages proximately resulted from such negligence.

Relief Sought

94. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

95. Plaintiff Catherine Juarez respectfully requests the entry of a Judgment by this Honorable Court, following a trial by a Jury of Twelve (12) Persons on the merits, and for the imposition of such Judgment for damages on all Counts in this Complaint, intended to compensate Catherine for the injuries and damages caused by the negligence of all named Defendants, for the imposition of punitive damages separately against Defendant Dorin and Defendant Taylor, for treble damages, costs, and attorney's fees for violations of the New Mexico Unfair Practices Act, for damages arising from the intentional violation of Catherine's civil rights, for consequential damages, for punitive

damages as set forth herein, for pre-and post-judgment interest, for costs, and for such other and further relief as the Court deems proper, all to the extent allowed by law.

Respectfully Submitted,

/s/ Lynn S. Sharp

Lynn S. Sharp

Maria M. Siemel

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Also as Attorney for Plaintiff

Luis B. Juarez

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LBJuarez@CyberMesa.com

REGISTER OF ACTIONS
CASE No. D-202-CV-2019-01169

Catherine Juarez v. Board of Regents of the University of NM, et al.

§
§
§
§
§

Case Type: **Tort Malpractice, Product Liability**
Date Filed: **02/11/2019**
Location:
Judicial Officer: **Campbell, Clay**

PARTY INFORMATION

Defendant	Beddow, Meghan, MD	Attorneys Mark J. Riley <i>Retained</i> 505-883-5030(W)
Defendant	Board of Regents of the University of NM	
Defendant	Dorin, Maxine, MD	Mark J. Riley <i>Retained</i> 505-883-5030(W)
Defendant	Taylor, Betsy, MD	Mark J. Riley <i>Retained</i> 505-883-5030(W)
Defendant	University of NM Health Sciences Center	Julie Taylor Gilmore <i>Retained</i> 505-272-8668(W)
Defendant	University of NM Medical Group	Julie Taylor Gilmore <i>Retained</i> 505-272-8668(W)
Plaintiff	Juarez, Catherine	Lynn S. Sharp <i>Retained</i> 505-842-5050(W)
		Maria M. Siemel <i>Retained</i> 505-288-5100(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

02/11/2019 **Cause Of Actions** Tort: Personal Injury Non Auto
Action Type Action

02/11/2019 **Cause Of Actions** Medical Malpractice
Action Type Action

02/11/2019 **OPN: COMPLAINT**

02/11/2019 **ARB: CERT NOT SUBJECT**

02/11/2019 **JURY DEMAND 12 PERSON**

03/19/2019 **ENTRY OF APPEARANCE**

03/21/2019 **STIPULATION**
Stipulation Regarding Complaint, and The Parties

03/26/2019 **NCJ: DISMISSAL BY PARTY**
Order Granting Dismissal of Defendants Maxine Dorin MD, Betsy Taylor MD and Meghan Beddow MD without Prejudice

04/04/2019 **MTN: TO WITHDRAW**
Joint Motion to Withdraw the Stipulation and Order of March 26, 2019

04/17/2019 **ORD: ORDER GRANTING**
Order withdrawing stipulation and order of March 26, 2019 dismissing defendants Maxine Dorin, MD, Betsy Taylor, MD, and Meghan Beddow, MD

05/10/2019 **AMENDED COMPLAINT**
First Amended Complaint For Breach Of Contract, Fraud, Personal Injuries From Medical Negligence, Intentional Infliction Of Emotional Distress, Negligent Misrepresentations, Res IPSA Loquitur, Violations Of The New Mexico Unfair Practices Act And Violations Of 42 U.S.C. 1983

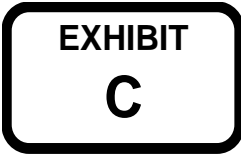
05/20/2019 **DISCOVERY**

05/23/2019 **DISCOVERY**

FINANCIAL INFORMATION

Plaintiff Juarez, Catherine	
Total Financial Assessment	432.00
Total Payments and Credits	432.00
Balance Due as of 06/06/2019	0.00

02/11/2019	Transaction Assessment		432.00
02/11/2019	File & Serve Payment	Receipt # ALBD-2019-4031	(432.00)
		Juarez, Catherine	



STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
2/11/2019 3:39 PM
James A. Noel
CLERK OF THE COURT
Catherine Chavez

CATHERINE JUAREZ,

Plaintiff,

v.

Case No. D-202-CV-2019-01169

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20**

Defendants.

**COMPLAINT FOR PERSONAL INJURIES
FROM MEDICAL NEGLIGENCE**

I. Parties, Jurisdiction and Venue

1. The subject matter of this lawsuit is medical care and operative services provided to Plaintiff Catherine Juarez (hereinafter Catherine) by Defendants.

2. Catherine is a resident of Sandoval County, New Mexico.

3. The defendant Board of Regents of the University of New Mexico (“Board of Regents”) is an entity established by the New Mexico Constitution to govern, operate, and control the University of New Mexico (hereinafter UNM) an educational entity established by the New Mexico Constitution, principally located in Bernalillo County, New Mexico. The Board of Regents and the UNM own, operate, and control

UNM Health Sciences Center, which includes UNM Hospital (hereinafter UNMH), which is a general hospital open to members of the public and which provides general emergency, medical and surgical care, including care for in the specialized field of OB/GYN.

4. The Board of Regents and UNM also own, operate and direct the UNM Medical Group, Inc. (hereinafter “Group”), which is a not-for-profit corporation that was formed in 2007 and has brought together more than 1,100 clinical practitioners in 152 specialties. The Group includes faculty at the University of New Mexico School of Medicine and serves as the exclusive caregivers to the state’s only academic medical center, University of New Mexico Hospital. The medical group operates 14 clinics serving about 45,000 patients and provides care at the hospital’s 76 clinics.

5. The principal offices of the Board of Regents, UNMH, and the Group (hereinafter Defendants) are in Bernalillo County, New Mexico.

6. Pursuant to NMSA 41-4-18 B, this matter is proper in this venue based upon the statutory directive that “venue for all other claims pursuant to the Tort Claims Act, shall be in the county in which the principal offices of the governing body of the local public body are located.”

7. The Defendant doctors Maxine Dorin, M.D., Betsy Taylor, M.D., and Meghan Beddow, M.D. (hereinafter Defendant Doctors) were employees of Defendants working within the scope and course of their employment as licensed medical physicians at all times at issue in this matter. Upon information and belief, Defendant Doctors reside or practice in Bernalillo County, New Mexico

8. The Defendants' staff employees, the John and Jane Does yet to be determined and named (hereinafter Defendant Staff) including operating room staff, operating room schedulers, and others were employees or agents of Defendants working within the scope and course of their employment at all times at issue in this matter. Upon information and belief, Defendant Staff reside or practice or work in Albuquerque, Bernalillo County, New Mexico.

9. Venue is proper in this action.

10. This Honorable Court has subject matter jurisdiction over this case.

11. This Honorable Court has personal jurisdiction over the Parties to this action.

II. Facts Common to All Counts:

12. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

13. Prior to her care by all Defendants, Catherine had a condition known as Polycystic Ovary Syndrome (hereinafter PCOS).

14. Catherine had been on birth control medications for over 25 years in an attempt to control her PCOS. She was also on the medication metformin on and off, as her body would tolerate, to treat the insulin resistance caused by the PCOS. She also developed a metabolic syndrome which then contributed to a host of other health issues.

15. Prior to her care by Defendants and Defendant Doctors, Catherine had always been active, even playing competitive soccer. As the PCOS progressed it caused problems of weight gain which further aggravated the insulin resistance, thereby placing her at risk of developing diabetes. As well as insulin resistance, PCOS creates risk of

hypertension, obesity, and increased risk of heart disease. Catherine dealt with a vicious cycle of weight gain, hair growth, hypertension, anxiety and depression. She was told nothing could help other than the birth control and metformin she was taking, but her quality of life and health issues only got worse.

16. Given these issues, Catherine's primary care physician was willing to take other steps to provide her with a better quality of life. Catherine tried pellet hormone replacement therapy (bioidentical hormones) in December 2017 along with progesterone to help not only with the PCOS, but the increased pelvic pain she was experiencing. The hormone therapy and progesterone helped slightly with her pain and menstrual cycles. Catherine then had an ultrasound to attempt to determine what could be causing the pain and to check the status of the ovaries. The results of the ultrasound showed a thickened endometrium and she still had hemorrhagic ovaries – PCOS.

17. Catherine discussed with her primary care provider the option of a hysterectomy and removal of her ovaries as a means of addressing the PCOS. Surgical Oophorectomy (surgical removal of the ovaries) is a recognized treatment for PCOS. This surgery was discussed given the absence of improvement in her quality of life, weight gain, and health issues absent this surgical intervention.

18. Catherine saw Defendant Dorin, an OB/GYN, who is one of the Defendant Doctors. Catherine met with Defendant Dorin beginning on May 31, 2018 for several visits and Catherine repeatedly expressed her desire for a hysterectomy **with removal of both ovaries at the time of the surgery.** Defendant Dorin agreed with this plan. Defendant Dorin fully understood, and confirmed with Catherine, that removal of

the ovaries would not only be part of the surgery but was the primary purpose for the surgery.

19. At the H&P Outpatient visit on September 4, 2018, Defendant Dorin confirmed this by scheduling of a RATLHBSO for September 21, 2018.

20. The abbreviation “**BSO**” as found multiple times in Catherine’s medical records, including the Surgical Consent Form signed by Catherine, means Bilateral Salpingectomy and Oophorectomy. Bilateral means both sides. Salpingectomy means removal of the fallopian tubes. **Oophorectomy means removal of the Ovaries.** The scheduled procedure “RATLHBSO” means a Robotic Assisted Total Laparoscopic Hysterectomy with Bilateral Salpingectomy **and Oophorectomy.** This was the procedure that Defendant Dorin and Catherine agreed and confirmed would be done and for which Catherine was consented for. This procedure was designed to remove Catherine’s ovaries and therefore surgically address her PCOS.

21. On September 21, 2018, Catherine presented to UNMH for the surgery. The Anesthesia Pre-Op Note documented a **BSO** as the procedure to be performed. The Consent for Surgery signed by Catherine on September 4, 2018 at the Pre-Op H&P visit with Defendant Dorin confirmed the fact of the oophorectomy.

22. Then, inexplicably, the actual surgical operation on Catherine by the Defendant Doctors and Defendant Staff at Defendants’ hospital did not remove Catherine’s ovaries, was not a BSO as planned, and Catherine was returned to her room after surgery with the ovaries not having been surgically removed by Defendant Doctors.

23. The Operative Report by Defendant Dorin for the surgery on September 21st then entirely mis-states the procedure, and the primary purpose for the procedure, by noting it as performed without the oophorectomy.

24. Notwithstanding paragraph 18 above, on the second page of Defendant Dorin's operative note she states that she submitted "ovaries" to pathology. It is clear that she could not have done so, because they were not surgically removed from Catherine as planned and promised, but rather still inside her.

25. It is clear that Defendant Dorin and Defendant Doctors and Defendant Staff had intended to take out Catherine's ovaries because their Operative Reports states the ovaries as having been submitted to Pathology for examination. But, they did not.

26. Notwithstanding Defendant Dorin's operative note about submitting the ovaries to pathology, the pathology report then confirms that no ovaries were submitted to pathology for examination.

27. Despite all of the pre-operative focus on the removal of the ovaries, and all of the documentation of it in the medical records, when the Defendant Doctors and Defendant Staff actually performed the procedure, the ovaries were not removed. There is nothing to explain this other than the fact that the Defendant Doctors and the Defendant Staff forgot to take them out.

28. This is supported by the subsequent actions of Defendant Dorin when she came into Catherine's room after the operation and apologized to Catherine and said that *"we forgot to take out your ovaries."*

29. After that one single post-op visit to Catherine's room, neither Defendant Dorin nor any of the Defendant Doctors ever attempted to see or talk to Catherine again, most likely because they were embarrassed about the critical surgical error.

30. There are procedures in place at Hospital's that perform surgery to prevent what happened to Catherine. These procedures are called "Time Out's or other similar terms. The Time Out is designed to stop everything prior to the start of the surgery so that all participants in the surgery, including the surgeons, the anesthesiologists, the scrub nurses and circulating nurse and all others involved in taking care of the patient in surgery, have a calm and purposefully directed opportunity to examine the consent form, talk to the patient, and all come to a concensus as the procedure to be performed and the means of performing the procedure.

31. It is clear that in this case, the Defendants failed in their duty to Catherine to have in place, and properly use, the necessary policies, procedures, and protocols to use and implement Time Outs or other means to prevent this type of wholly avoidable surgical mistake.

32. As a result of this grossly negligent error by the Defendants, the Defendant Doctors, and the Defendant Staff, Catherine is not only right back where she started from the standpoint of still having her ovaries and PCOS health issues, but she is instead in much worse condition than when she started this process. The pre-operative hormone management to prepare for the removal of her ovaries and prevent surgically induced menopause, has now placed her in an even more precarious position as to this condition than before the surgery.

33. Catherine has suffered severe and ongoing injuries and damages as a result of the negligence of the Defendants, the Defendant Doctors, and the Defendant Staff.

III. Negligence and Causation:

34. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

35. In treating and operating upon their patient Catherine, the Defendant Doctors, as specialists in the field of OB/GYN were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified specialists of the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

36. In treating and operating upon their patient Catherine, the Defendants and the Defendant Staff and all of their other employees and agents of the Defendants, providing care as a hospital holding itself as providing services in the specialized field of OB/GYN surgery, were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified specialty facilities and staff in the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

37. As a proximate result of the breach of their duty to Catherine, the Defendants, the Defendant Doctors, and the Defendant Staff proximately caused severe injury and suffering and other damages to Catherine, all as to be proven at trial.

IV. Relief Sought:

38. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

39. Plaintiff Catherine Juarez respectfully requests the entry of a Judgment by this Honorable Court, following a trial by a Jury of Twelve (12) Persons on the merits, and for the imposition of such Judgment for negligence, causation, and damages to compensate Plaintiff for the injuries and damages caused by the negligence of all named Defendants, for pre-and post-judgment interest, for costs, and for such other and further relief as the Court deems proper, all to the extent allowed by law.

Respectfully Submitted,

/s/ Lynn S. Sharp
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Also as Attorney for Plaintiff

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LBJuarez@CyberMesa.com

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
3/26/2019 3:42 PM
James A. Noel
CLERK OF THE COURT
Brittany Tso

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

CATHERINE JUAREZ,

Plaintiff,

v.

Case No. D-202-CV-2019-01169

THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and UNIVERSITY OF
NEW MEXICO MEDICAL GROUP, and
MAXINE DORIN, M.D., and BETSY TAYLOR, M.D.,
and MEGHAN BEDDOW, M.D. and JOHN AND JANE
DOES 1-20,

Defendants.

ORDER GRANTING DISMISSAL OF DEFENDANTS
MAXINE DORIN, M.D., BETSY TAYLOR, M.D. AND
MEGHAN BEDDOW, M.D. WITHOUT PREJUDICE

THIS MATTER having come before the Court upon the Stipulation Regarding Complaint, and the Parties, and the Court having been fully advised herein, finds that the stipulation is well-taken and should be granted.

IT IS THEREFORE ORDERED that Defendants Maxine Dorin, M.D., Betsy Taylor, M.D. and Meghan Beddow, M.D. are hereby dismissed from the lawsuit without prejudice.

A handwritten signature in black ink, appearing to be 'CC', written over a horizontal line.

Clay Campbell
District Court Judge

Approved:

approved 3/25/2019

Julie Taylor Gilmore
Associate University Counsel
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Albuquerque, NM 87131-0001
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505-272-1938 (fax)
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*Attorneys for The University of New
Mexico Board of Regents for its
public operation known as the
Health Sciences Center*

and

approved via email 3/25/2019

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Attorneys for Plaintiff

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
4/17/2019 1:21 PM
James A. Noel
CLERK OF THE COURT
Gena Lopez

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
SECOND JUDICIAL DISTRICT

CATHERINE JUAREZ,

Plaintiff,

Case No. D-202-CV-2019-01169

THE BOARD OF REGENTS OF THE UNIVERSITY
OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, Inc. and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20

Defendants.

**ORDER WITHDRAWING STIPULATION AND ORDER OF
MARCH 26, 2019 DISMISSING DEFENDANTS MAXINE DORIN, M.D.,
BETSY TAYLOR, M.D., AND MEGHAN BEDDOW, M.D.**

THIS MATTER having come before the Court on the Joint and Stipulated Motion of the Parties, to withdraw the Stipulation and Order of March 26, 2019, and the Court agreeing as to the grounds now stipulated to, hereby

ORDERS THAT the previously submitted matters be withdrawn, including the:

1. Stipulation Regarding Complaint and the Parties; and
2. Order Granting Dismissal of Defendants Maxine Dorin, M.D., Betsy Taylor, M.D., and Meghan Beddow, M.D. Without Prejudice;
3. That any acceptance of service of the Complaint is hereby withdrawn.

The Court further orders that no party shall have waived any claim or defense it held prior to March 26, 2019.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Clay Campbell
District Court Judge

APPROVED:

By: /s/ Mark J. Riley
Mark J. Riley
D. Chet Alderete
Riley, Shane & Keller, P.A.
3880 Osuna Road NW
Albuquerque, NM 87109
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Attorneys for Defendants

And

By: Electronically approved on April 3, 2019
Lynn S. Sharp
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FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
5/10/2019 2:54 PM
James A. Noel
CLERK OF THE COURT
Dora Bozovic

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

CATHERINE JUAREZ,

Plaintiff,

v.

Case No. D-202-CV-2019-01169

THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEW MEXICO and
UNIVERSITY OF NEW MEXICO HEALTH
SCIENCES CENTER, and
UNIVERSITY OF NEW MEXICO MEDICAL
GROUP, and
MAXINE DORIN, M.D. and
BETSY TAYLOR, M.D. and
MEGHAN BEDDOW, M.D. and
JOHN AND JANE DOES 1-20

Defendants.

**FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT, FRAUD, PERSONAL INJURIES
FROM MEDICAL NEGLIGENCE, INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS, NEGLIGENT MISREPRESENTATIONS,
RES IPSA LOQUITUR,
VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT
AND VIOLATIONS OF 42 U.S.C. § 1983**

COMES NOW Plaintiff, Catherine Juarez, by and through her counsel of record
Sharp Law Firm (Lynn S. Sharp and Maria M. Siemel) and for her Complaint for
Damages based upon various counts, states, asserts, and alleges as follow:

Parties, Jurisdiction and Venue

1. The subject matter of this lawsuit is medical care and operative services provided to Plaintiff Catherine Juarez (hereinafter Catherine) by Defendants, as well as the attendant misrepresentations, breach of contract, fraud, intentional infliction of emotional distress, battery, violations of the New Mexico Unfair Practices Act, and Violations of 42 U.S.C. § 1983.

2. The Plaintiff Catherine Juarez (hereinafter Catherine) is a resident of Sandoval County, New Mexico.

3. The defendant Board of Regents of the University of New Mexico (“Board of Regents”) is an entity established by the New Mexico Constitution to govern, operate, and control the University of New Mexico (hereinafter UNM) an educational entity established by the New Mexico Constitution, principally located in Bernalillo County, New Mexico. The Board of Regents and UNM own, operate, and control UNM Health Sciences Center, which includes UNM Hospital (hereinafter UNMH), which is a general hospital open to members of the public and which provides general emergency, medical and surgical care, including care in the specialized field of OB/GYN.

4. The Board of Regents and UNM also own, operate and direct the UNM Medical Group, Inc. (hereinafter “Group”), which is a not-for-profit corporation that was formed in 2007 and has brought together more than 1,100 clinical practitioners in 152 specialties. The Group includes faculty at the University of New Mexico School of Medicine and serves as the exclusive caregivers to the state’s only academic medical center, University of New Mexico Hospital. The medical group operates 14 clinics serving about 45,000 patients and provides care at the hospital’s 76 clinics.

5. The principal offices of the Board of Regents, UNMH, and the Group (hereinafter Defendants) are in Bernalillo County, New Mexico.

6. Pursuant to NMSA 41-4-18 B, this matter is proper in this venue based upon the statutory directive that “venue for all other claims pursuant to the Tort Claims Act, shall be in the county in which the principal offices of the governing body of the local public body are located.”

7. The Defendant doctors Maxine Dorin, M.D., Betsy Taylor, M.D., and Meghan Beddow, M.D. (hereinafter Defendant Doctors) were employees of Defendants acting in the course and scope of their official duties as licensed medical physician employees at all times at issue in this matter. Upon information and belief, Defendant Doctors reside or practice in Bernalillo County, New Mexico.

8. The Defendants’ staff employees, the John and Jane Does yet to be determined and named (hereinafter Defendant Staff) including operating room staff, operating room schedulers, and others who were employees or agents of Defendants working within the scope and course of their official employment at all times at issue in this matter. Upon information and belief, Defendant Staff reside or practice or work in Albuquerque, Bernalillo County, New Mexico.

9. Venue is proper in this action.

10. This Honorable Court has subject matter jurisdiction over this case.

11. This Honorable Court has personal jurisdiction over the Parties to this action.

Facts Common to All Counts

12. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

13. Prior to her care by all Defendants, Catherine had a condition known as Polycystic Ovary Syndrome (hereinafter PCOS).

14. Catherine had been on birth control medications for over 25 years in an attempt to control her PCOS. She was also on the medication metformin on and off, as her body would tolerate, to treat the insulin resistance caused by the PCOS. She also developed a metabolic syndrome which then contributed to a host of other health issues.

15. Prior to her care by Defendants and Defendant Doctors, Catherine had always been active, even playing competitive soccer. As the PCOS progressed it caused problems of weight gain which further aggravated the insulin resistance, thereby placing her at risk of developing diabetes.

16. Catherine discussed with her primary care provider the option of a hysterectomy and removal of her ovaries as a means of addressing the PCOS. Surgical Oophorectomy (surgical removal of the ovaries) is a recognized treatment for PCOS. This surgery was discussed given the absence of improvement in her quality of life, weight gain, and health issues absent this surgical intervention.

17. After researching providers to remove her ovaries and to provide a course of endocrinology treatment for her in conjunction with the removal of her ovaries, Catherine selected Maxine Dorin, M.D. (hereinafter Dorin) based on her reputation and her extensive experience with PCOS and surgical removal of the ovaries to treat PCOS.

18. Because PCOS creates risk of hypertension, obesity, and increased risk of heart disease Catherine continues to suffer from the deleterious effects of PCOS, including but not limited to weight gain, hair growth, and increased blood pressure/hypertension because the Defendants, Defendant Doctors and Defendant Staff failed to perform the surgery she contracted for.

19. Additionally, in reliance upon Dorin's representations that Dorin herself was going to remove Catherine's ovaries, Catherine accepted a course of additional hormones before the surgery to prevent surgical menopause. Because Dorin failed to remove Catherine's ovaries, (failed to perform the surgery for which Catherine had contracted with Dorin), this course of additional hormones, in the absence of the oophorectomy, caused Catherine to suffer an excess hormone condition causing her to become depressed and anxious, to suffer from random and uncontrollable bouts of crying, and other types of emotional regulation issues that she did not have prior to Dorin's breach of contract, medical negligence, and other torts.

20. Catherine met with Dorin beginning on May 31, 2018 for several visits and Catherine repeatedly expressed her desire for a hysterectomy **with removal of both ovaries at the time of the surgery**. Dorin agreed with this plan and represented to Catherine that she, Dorin, would perform the procedure unless she was unable to do so and that this procedure would be performed on Catherine. There is no evidence that Dorin was unable to perform the agreed upon surgical procedure. Dorin fully understood, and confirmed with Catherine, that removal of the ovaries would not only be part of the surgery but was the primary purpose for the surgery. This plan and contract

between Dorin and Catherine was agreed upon and confirmed in writing, being then signed and executed by both Dorin and Catherine.

21. After the surgery, which was not performed by Dorin as agreed upon, and where the ovaries were not removed as agreed upon, Dorin and the other Defendants billed and charged Catherine for the full surgery which included removal of ovaries, and Catherine through her health insurance paid Dorin and the Defendants for those billed charges. Dorin and the other Defendants billed Catherine for, and were actually paid for, a surgical procedure which was not done, and which Dorin and the other Defendants knew had not been done.

22. Catherine and Dorin and the other Defendants originally scheduled the surgery for September 29, 2018. In reliance upon that, Catherine prepared all of her FMLA paperwork and arranged for family members to take off of work on that date and for time following that date, all of which was a substantial effort by Catherine.

23. At the H&P Outpatient visit on September 4, 2018, however, Dorin informed Catherine that she had decided to go out of town on the date the surgery had been scheduled and agreed upon, and Dorin was going to simply cancel Catherine's September 29, 2018 surgery date, despite all of the effort Catherine had expended to arrange for the surgery on the agreed upon date.

24. Eventually, Catherine was able to obtain Dorin's express agreement to have her surgery performed by Dorin on September 21, 2018, before Dorin left town.

25. On September 4, 2018, Catherine was also presented with a Consent for Surgery contract that offered, among other things, that Dorin would perform the surgery to remove her ovaries unless Dorin was "*unable to*". Despite that component of offer

and acceptance, Dorin did not perform the September 21, 2018 surgery (hereinafter the surgery). There is no indication that Dorin was “unable to” perform this surgery. In fact it was Dorin who fraudulently created and charted the intentionally false Operative Report for the surgery.

26. Defendant Dorin, who is the party with superior knowledge of the surgery and the operative process, discussed and offered the terms of the Consent for Surgery Contract with Catherine. Both Dorin and Catherine agreed to the terms of the Consent for Surgery Contract, offer and acceptance having been completed, and both Dorin and Catherine signed this written contract.

27. In reliance upon Defendant Dorin’s representations that she would be performing her surgery and/or be present and supervising the performance of certain portions of her surgery, Catherine accepted the terms of the Consent For Surgery contract which Dorin presented to her on September 4, 2018 to formalize and document, in writing, this contractual agreement.

28. On September 21, 2018, Catherine presented herself to UNMH for the agreed upon surgery, now relying upon the Consent For Surgery Contract she entered into with Dorin, which expressly stated that the oophorectomy “**will be performed on you**” and would be performed by Dorin unless Dorin was unable to.

29. The Anesthesia Pre-Op Note documented a bilateral salpingectomy and oophorectomy, “**BSO**”, with the “**O**” signifying removal of the ovaries, as the procedure to be performed.

30. Despite her knowing and reckless false representations to Catherine that she would be present at, perform and/or supervise Catherine’s surgery, it appears from

the medical records that Dorin did not perform or attend Catherine's September 21, 2018 surgery and that Catherine's surgical operation was actually attended and performed by Defendant Taylor and Defendant Beddow. Defendant Taylor and Defendant Beddow did not have Catherine's permission to touch her or perform surgery on her and, therefore, committed a battery upon Catherine.

31. Not only did Defendant Taylor and Defendant Beddow commit a battery upon Catherine, but in doing so they violated a constitutionally protected right of Catherine and did so under color of law.

32. In flagrant breach of the Consent For Surgery contract with Catherine, Dorin failed to perform or attend Catherine's September 21, 2018 procedure to remove her ovaries, and Defendant Taylor (hereinafter Taylor) and Defendant Beddow (hereinafter Beddow) failed to remove Catherine's ovaries when they performed the surgery.

33. This is supported by the subsequent actions of Dorin when she came into Catherine's room after the operation, apologized curtly, and stated that "*we forgot to take out your ovaries.*" This statement created yet another false and fraudulent representation by implying that Dorin had actually attended Catherine's surgery.

34. After that one single post-op visit to Catherine's room, neither Dorin nor any of the Defendant Doctors ever attempted to see or talk to Catherine again. To this date, Catherine has never met or been introduced to Taylor or Beddow.

35. The Anesthesia Report for Catherine's surgery does not document a time-out by the surgical team, nor does it indicate that Dorin was present at the surgery.

36. Dorin's Operative Report, in contrast, intentionally and fraudulently states that a time-out was taken at the beginning of Catherine's procedure; that Dorin was present during the procedure and that Catherine's ovaries were removed and submitted to Pathology. Dorin's Operative Report is, therefore, an intentionally false and fraudulent misrepresentation.

37. The Pathology Report for Catherine's surgery confirms that her ovaries were not to submitted to Pathology as fraudulently charted by Dorin. Further, Catherine was denied access to her pathology report for at least two months after the surgery and was only able to obtain them through the assistance of her counsel.

38. When Catherine requested her medical records, Dorin, Taylor and all other Defendants intentionally withheld the Pathology Report from the records that were given to Catherine. The Pathology Report was not produced until inside counsel for UNMH was contacted by Catherine's attorneys in this matter to obtain that report. This was an attempt by all Defendants to further fraudulently conceal their negligence and other torts from Catherine.

39. As a result of this gross error by the Defendants, the Defendant Doctors, and the Defendant Staff, Catherine is not only right back where she started from the standpoint of still having her ovaries and PCOS health issues, but she is instead in much worse condition than when she started this process. The pre-operative hormone management to prepare for the removal of her ovaries and prevent surgically induced menopause, has now placed her in an even more precarious position as to this condition than before the surgery.

40. Catherine has suffered severe and ongoing injuries and damages as a result of the negligence of the Defendants, the battery by the Defendant Doctors, the violation of her civil rights by the Defendant Doctors, and the breach of contract by the Defendant Doctors and the Defendant Staff.

COUNT 1

Breach of Contract by Dorin and Taylor

41. After researching PCOS providers, Catherine decided that Dorin was the best provider for her PCOS and asked Dorin to treat her.

42. Dorin offered to treat Catherine's PCOS and as a part of that treatment offered and agreed to perform a bilateral Salpingectomy and Oophorectomy according to the terms of the September 4, 2018 Consent for Surgery Contract which was accepted by Catherine, agreed upon and signed by both Dorin and Catherine, and then this contract was neither modified nor repudiated by either party.

43. Dorin had originally scheduled Catherine's surgery for September 29, 2018 but then decided to leave town instead which required Catherine to reschedule the surgery even though Catherine had already relied upon the prior schedule, completed, submitted and obtained FMLA approval for leave, all based upon Dorin's original offer to perform the surgery on September 29, 2018.

44. Dorin breached her contractual duties and obligations to Catherine when she failed to perform, supervise and/or attend Catherine's September 21, 2018 RATLHBSO surgery.

45. Dorin intentionally, wantonly, maliciously, and with utter disregard for Catherine's health and safety, failed to remove Catherine's ovaries and thereby breached her Consent for Surgery contract with Catherine.

46. The contract executed by Dorin also makes the attending defendant physicians parties to that contract. One of the attending defendant physicians who was a party to that contract and who was bound and obligated by its terms is Taylor.

47. By failing to perform the removal of Catherine's ovaries and by failing to chart what actually happened during Catherine's surgery and instead fraudulently charting false statements in the chart, Taylor breached her contract with Catherine.

48. Dorin's and Taylor's breach of their contract with Catherine has damaged Catherine who continues to suffer from PCOS, who has suffered from emotional regulation damages caused by the hormone treatment she was given in reliance on having her ovaries removed and having the removal of her ovaries supervised by Dorin and /or by Taylor, and has suffered compensatory, direct, and consequential damages in an amount to be determined at trial. These damages are the direct and proximate result of Dorin's and Taylor's intentional breach of their contract with Catherine.

COUNT 2

Fraud and Fraudulent Misrepresentation

49. Dorin falsely represented to Catherine that Dorin would perform her surgery and/or would be present at Catherine's surgery supervising the performance of the removal of Catherine's ovaries.

50. The representation of this fact was false and Dorin knew it to be false but recklessly made the representation.

51. Dorin made this false representation to Catherine with the intent to deceive and induce Catherine to sign the September 4, 2018 Consent for Surgery contract and to have her surgery at Dorin's facility so that Dorin, Taylor, and all other Defendants could bill and charge, then collect, the monies that would be owed to all Defendants by Catherine.

52. Catherine did in fact rely upon Dorin's knowing or reckless fraudulent representations to Catherine, that she (Dorin) would perform or, at a minimum, would be present at and supervise, Catherine's surgery, and that this surgery would remove Catherine's ovaries.

53. Catherine relied upon these representations by Dorin to Catherine's detriment. If Catherine knew before entering into the Consent for Surgery contract of September 4, 2018, that Dorin would not be performing her surgery, and that her ovaries would not be removed with the surgery, Catherine would not have entered into this contract.

54. As a result of that reliance Catherine signed the Consent for Surgery contract, and then was damaged by Dorin's and Taylor's breach thereof. Despite Dorin's intentional failure to be present at, supervise and/or perform the removal of Catherine's ovaries, and Taylor's failure to remove the ovaries, Catherine was billed in full for the services of Dorin and Taylor. Such conduct constitutes Fraud and Deceit.

COUNT 3

Fraudulent Inducement by Dorin

55. With the intention of obtaining Catherine's agreement to the September 4, 2018, Consent For Surgery Contract, Dorin knowingly or recklessly misrepresented to

Catherine that she would perform and/or be present at and supervise Catherine's surgery to remove her ovaries, and that her ovaries would in fact be removed.

56. Catherine relied upon Dorin's superior knowledge as well as Dorin's knowing and reckless false representations to Catherine, and therefore agreed to, and signed, the Consent for Surgery contract to her detriment.

COUNT 4

**Breach of Implied Warranty of Use of Reasonable Skill
by Dorin and Taylor**

57. Dorin and Taylor undertook to perform the surgical removal of Catherine's ovaries, fallopian tubes, and uterus, which requires skill and care, and special training and experience .

58. Dorin and Taylor were obligated to possess and apply the knowledge and to use the skill and care ordinarily used by a reasonably well qualified physicians in the same field of medicine and giving due consideration to the locality involved.

59. Dorin and Taylor breached their contract with Catherine and further breached the implied warranty of use of reasonable skill and care when they failed to remove Catherine's ovaries at her surgery.

COUNT 5

Breach of Duty of Good Faith and Fair Dealing by Dorin

60. Dorin intentionally failed to personally perform Catherine's surgery, and thereby withheld from Catherine the agreed upon benefits of the contract they had mutually agreed upon under the Consent for Surgery Contract of September 4, 2018.

61. Dorin intentionally failed to supervise Catherine's surgery, and thereby withheld the agreed upon benefits to Catherine of the contract they had mutually agreed upon under the Consent for Surgery Contract of September 4, 2018.

62. When Taylor intentionally failed to remove Catherine's ovaries during Catherine's surgery, she withheld from Catherine the agreed upon benefits of the Consent for Surgery Contract of September 4, 2018.

63. The acts and omissions of Dorin and Taylor at, and related to, Catherine's surgery to remove her ovaries breached the duty of good faith and fair dealing they owed Catherine.

COUNT 6

Spoliation of Evidence by Dorin and Taylor

64. After Catherine's September 21, 2018 surgery ended, Dorin and Taylor knew that there was a lawsuit or the potential of a lawsuit because they knew that they had failed to remove Catherine's ovaries, which was the primary purpose of that surgery, and that Taylor performed the surgery instead of Dorin.

65. Dorin intentionally dictated or created an operative note that indicated that a time-out had been taken pre-operatively in the operating room and that Catherine's ovaries had been submitted to pathology.

66. Even though Dorin knew that Catherine's ovaries had not been removed, Dorin allowed the falsified operative note stand and made no attempt to correct, revise, or add to it to reflect what had actually happened during the surgery.

67. Taylor knew that Catherine's ovaries had not been removed and she failed to make any charting or operative note regarding the surgery and what actually happened while Catherine was in the operating room.

68. Dorin's falsified operative note and Taylor's failure to create a correct operative note constitute the disposition, destruction, mutilation, significant falsification or alteration of potential material evidence.

69. The intent of Dorin's and Taylor's acts and omissions set out in the previous paragraphs of Count 6, was to disrupt or defeat Catherine's potential lawsuit against them.

70. Upon information and belief, Dorin and Taylor's disposition, destruction, falsification or alteration of the evidence has resulted in Catherine's inability to prove her case, especially as to what actually happened before, during, and after her surgery.

71. As a result of Dorin's and Taylor's disposition, destruction, falsification and/or alteration of evidence material to Catherine's claims against them, Catherine has suffered further damages and cannot prove her case on these issues.

COUNT 7

Violations of Catherine's Civil Rights under 42 U.S.C. § 1983 by Taylor and Beddow

72. Plaintiff incorporates herein all previously stated facts, allegations and assertions.

73. Taylor and Beddow are employees of a governmental entity, namely the entities identified in her Complaint.

74. Taylor and Beddow act in their official capacity as surgeons, professors, department heads, and in other supervisory capacities, all doing so under color of law.

75. Catherine has a constitutional right not to have her physical integrity violated without actual, knowing and informed consent.

76. At no time did Catherine consent to Taylor or Beddow touching her, performing any surgery on her, or providing any other medical treatment to her.

77. At the time of Catherine's surgery, it had been long and clearly established that a person, such as Catherine, had a constitutionally protected right to her bodily integrity. A reasonable person in Taylor or Beddow's position would have known that Catherine had a constitutionally protected right to privacy and to her physical integrity, and that such would be violated by performing surgery on her without her consent.

78. The contract Catherine signed consented to allow Dorin, and Dorin alone, to perform the September 21, 2018 surgery on her.

79. Catherine's September 21, 2018 surgery was performed by Taylor and/or Beddow, in their official capacity and under color of law, without Catherine's consent, in violation of her constitutional right to her privacy and to her physical integrity, and constituted a battery upon Catherine.

80. As a result of Taylor and Beddow's violation of Catherine's right to privacy and to her physical integrity, which occurred when they performed surgery on Catherine without her consent, Catherine has suffered compensatory damages.

81. Furthermore, Taylor and Beddow's willful violation of Catherine's constitutional rights, warrants the award of punitive damages against them, and in amounts to be determined at trial.

Count 8

Battery on Catherine by Taylor and Beddow

82. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

83. When Taylor and Beddow performed surgery on Catherine without Catherine's consent and authorization to their performance of that surgery, they committed a battery on Catherine.

84. Catherine was damaged by Taylor and Beddow's unauthorized touching and battery, on September 21, 2018.

Count 9

Medical Negligence by Dorin, Taylor, Beddow and All Other Defendants

85. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

86. In treating and operating upon their patient Catherine, the Defendant Doctors, as specialists in the field of OB/GYN were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified specialists of the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

87. In treating and operating upon their patient Catherine, the Defendants and the Defendant Staff and all of their other employees and agents of the Defendants, providing care as a hospital holding itself out as capable of providing services in the specialized field of OB/GYN surgery, were under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified

specialty facilities and staff in the same medical specialty, practicing under similar circumstances and giving due consideration to the locality involved. By failing to do so they were negligent.

88. As a proximate result of the breach of their duty to Catherine, as set forth above, the Defendants, the Defendant Doctors, and the Defendant Staff proximately caused severe injury and suffering and other damages to Catherine, all as to be proven at trial.

COUNT 10

Gross Negligence by Dorin and Taylor

89. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

90. By the acts and omissions described herein, Dorin and Taylor demonstrated behavior toward Catherine that was malicious, willful, reckless, wanton, fraudulent, in bad faith, all of which was conduct in utter disregard for Catherine's safety and well-being.

91. As to those acts and omissions of gross negligence based upon breach of contract and other counts as set forth above, any restriction or prohibition as to punitive damages against Dorin and Taylor, individually, under the New Mexico Tort Claims Act do not apply.

92. Catherine is, therefore, entitled to an award for punitive damages against Dorin and Taylor all in an amount to be proved at trial.

COUNT 11

Intentional Infliction of Emotional Distress

93. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

94. The conduct of Dorin and Taylor as set forth in this Complaint, was extreme and outrageous under the circumstances.

95. By engaging in this conduct, Dorin and Taylor acted intentionally or recklessly.

96. This conduct by Dorin and Taylor is of a nature which goes beyond the bounds of common decency and is atrocious and intolerable to an ordinary person. It is of an intensity and duration that no ordinary person would be expected to tolerate it.

97. As a result of this conduct by Dorin and Taylor, Catherine experienced, and continues to experience, severe emotional distress.

COUNT 12

Negligent Misrepresentation

98. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

99. The conduct of Dorin and Taylor as set forth in this Complaint, constituted a negligent and material misrepresentation, and an untrue statement which Dorin and Taylor intended Catherine to rely on and upon which, in fact, Catherine did rely upon.

100. The negligent misrepresentations by Dorin and Taylor to Catherine were statements which Dorin and Taylor had no reasonable ground for believing that the statements they made were true.

101. As a result of the negligent misrepresentations of Dorin and Taylor, Catherine has suffered, and will continue to suffer, damages as will be proved at trial.

COUNT 13

Violations of the New Mexico Unfair Practices Act

102. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

103. Plaintiff Catherine Juarez, and Defendants Maxine Dorin and Betsy Taylor, meet the definition of a “person” under the New Mexico Unfair Practices Act [57-12-1, et seq. NMSA 1978] (hereinafter UPA).

104. Dorin and Taylor, through their acts, omissions, misrepresentations, fraud, deceit and other actions and conduct in this matter, have violated a number of the provisions of the UPA, and have engaged in and committed acts which have specifically been declared unlawful pursuant to the UPA, 57-12-2(D).

105. Dorin and Taylor, through their acts, omissions, misrepresentations, fraud, deceit and other actions and conduct in this matter, have committed acts which have specifically been declared as unconscionable trade practices under the UPA, 57-12-2(E).

106. Based upon the foregoing, Catherine is entitled to recover treble damages, costs and attorney’s fees against Dorin and Taylor.

COUNT 14

Res Ipsa Loquitur

107. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

108. The injury and damages to Catherine were proximately caused by the surgery on September 21, 2018, and the events leading up to and following said surgery, were Dorin's, Taylor's, Beddow's and all other Defendants' responsibility to manage and control.

109. The failure to remove Catherine's ovaries in the surgery of September 21, 2018, and the acts or omissions of all Defendants before and after the surgery, was of a kind which does not ordinarily occur in the absence of negligence. Dorin, Taylor, Beddow and all other Defendants were in actual control and supervision of that surgery and the events leading up to and following that surgery of September 21, 2018.

110. It can be inferred, therefore, that Dorin, Taylor, Beddow, and all other Defendants were negligent, and that Catherine's injuries and damages proximately resulted from such negligence.

Relief Sought

94. Plaintiff incorporates herein all facts, allegations and assertions as stated previously.

95. Plaintiff Catherine Juarez respectfully requests the entry of a Judgment by this Honorable Court, following a trial by a Jury of Twelve (12) Persons on the merits, and for the imposition of such Judgment for damages on all Counts in this Complaint, intended to compensate Catherine for the injuries and damages caused by the negligence of all named Defendants, for the imposition of punitive damages separately against Defendant Dorin and Defendant Taylor, for treble damages, costs, and attorney's fees for violations of the New Mexico Unfair Practices Act, for damages arising from the intentional violation of Catherine's civil rights, for consequential damages, for punitive

damages as set forth herein, for pre-and post-judgment interest, for costs, and for such other and further relief as the Court deems proper, all to the extent allowed by law.

Respectfully Submitted,

/s/ Lynn S. Sharp

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