

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

**CATHERINE JUAREZ,**

**Plaintiff,**

**No. 1:19-cv-521-JFR-SCY**

**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.**

**DEFENDANT BETSY TAYLOR, M.D.'S ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR BREACH OF CONTRACT, FRAUD, PERSONAL  
INJURIES FROM MEDICAL NEGLIGENCE, INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS, NEGLIGENT MISREPRESENTATIONS, RES  
IPSA LOQUITUR, AND VIOLATIONS OF THE NEW MEXICO  
UNFAIR PRACTICES ACT AND VIOLATIONS OF U.S.C. § 1983**

**COMES NOW** Defendant, Betsy Taylor, M.D. (hereinafter "Defendant"), by and through her attorneys of record, Riley, Shane & Keller, P.A. (Mark J. Riley and D. Chet Alderete), answers the allegations contained in Plaintiff's First Amended Complaint for Breach of Contract, Fraud, Personal Injuries from Medical Negligence, Intentional Infliction of Emotional Distress, Negligent Misrepresentations, RES IPSA LOQUITUR, and Violations of the New Mexico Unfair Practices Act and Violations of U.S.C. § 1983 ("Plaintiff's Amended Complaint"), as follows:

### **FIRST DEFENSE**

Defendant responds to the individual allegations of Plaintiff's Amended Complaint as follows:

#### **Parties, Jurisdiction and Venue**

1. The allegations contained in Paragraph 1 of Plaintiff's Amended Complaint are directed at another party, and thus, no response is required of this Defendant. To the extent a response is required, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.
2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint.
3. The allegations contained in Paragraph 3 of Plaintiff's Amended Complaint are directed at another party, and thus, no response is required of this Defendant. To the extent a response is required, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.
4. The allegations contained in Paragraph 4 of Plaintiff's Amended Complaint are directed at another party, and thus, no response is required of this Defendant. To the extent a response is required, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.

5. Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint.
6. Defendant admits the allegations contained in Paragraph 6 of Plaintiff's Amended Complaint.
7. Defendant admits the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint that Defendant's Dorin, Taylor and Beddow were employees of the University of New Mexico Medical School acting within the scope of their duties and Defendants admit they were practicing within Bernalillo County.
8. Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.
9. Defendant admits the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint.
10. Defendant admits the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint.
11. Defendant admits the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint.

**Facts Common to All Counts**

12. Defendant submits the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.
13. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
15. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
16. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
17. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
18. Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint.
19. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
20. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.
21. With respect to Paragraph 21 of Plaintiff's Amended Complaint, Defendant admits the oophorectomy was not performed, but denies the remaining allegations contained in that Paragraph.

22. With respect to Paragraph 22 of Plaintiff's Amended Complaint, Defendant denies "Catherine and Dorin and the other Defendants originally scheduled the surgery for September 29, 2018." Defendant lacks sufficient information or knowledge to form a belief as to the truth of the following allegations contained in Paragraph 22 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof: "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. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

24. With respect to Paragraph 24 of Plaintiff's Amended Complaint, Defendant admits "agreement to have her surgery performed by Dorin on September 21, 2018", but denies the remaining allegations in that Paragraph.

25. With respect to Paragraph 25 of Plaintiff's Amended Complaint, Defendant admits a "Consent for Surgery" was signed which the document speaks for itself but denies the remaining allegations in that Paragraph.

26. With respect to Paragraph 26 of Plaintiff's Amended Complaint, Defendant admits a "Consent for Surgery" was signed which the document speaks for itself but denies the remaining allegations in that Paragraph.

27. With respect to Paragraph 27 of Plaintiff's Amended Complaint, Defendant admits a "Consent for Surgery" was signed which the document speaks for itself but denies the remaining allegations in that Paragraph.
28. With respect to Paragraph 28 of Plaintiff's Amended Complaint, Defendant admits "On September 21, 2018, Catherine presented herself to UNMH for surgery", but denies the remaining allegations in that Paragraph.
29. With respect to Paragraph 29 of Plaintiff's Amended Complaint, Defendant admits "Anesthesia Pre-Op Note" was entered which speaks for itself but denies the remaining allegations in that Paragraph.
30. With respect to Paragraph 30 of Plaintiff's Amended Complaint, Defendant admits on September 21, 2018 Defendant Dorin, Taylor and Beddow participated in a hysterectomy procedure. An oophorectomy was not performed as alleged. Defendant denies the remaining allegations in that Paragraph.
31. Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint.
32. With respect to Paragraph 32 of Plaintiff's Amended Complaint, Defendant admits on September 21, 2018 Defendant Dorin, Taylor and Beddow participated in a hysterectomy procedure. An oophorectomy was not performed as alleged. Defendant denies the remaining allegations in that Paragraph.
33. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

34. Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Amended Complaint.

35. With respect to Paragraph 35 of Plaintiff's Amended Complaint, Defendant admits an Anesthesia Report was filed but denies the remaining allegations in that Paragraph.

36. Defendant denies the allegations contained in Paragraph 36 of Plaintiff's Amended Complaint.

37. With respect to Paragraph 37 of Plaintiff's Amended Complaint, Defendant admits that the pathology report confirms that her ovaries were not submitted to pathology but denies the remaining allegations in that Paragraph.

38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Amended Complaint.

39. With respect to Paragraph 39 of Plaintiff's Amended Complaint, Defendant admits Plaintiff can elect to have an oophorectomy at any time. Defendant further admits that if Plaintiff is alleging damages due to non-performance of the oophorectomy, she has a duty to schedule it as soon as practical to mitigate her damages. Defendant denies all the remaining allegations in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Amended Complaint.

**Count 1**  
**Breach of Contract by Dorin and Taylor**

41. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 41 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

42. With respect to Paragraph 42 of Plaintiff's Amended Complaint, Defendant admits that Dorin treated Plaintiff but denies the remaining allegations in that Paragraph.

43. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 43 of Plaintiff's Amended Complaint and therefore denies the same and demands strict proof thereof.

44. Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Amended Complaint.

45. Defendant denies the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of Plaintiff's Amended Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of Plaintiff's Amended Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of Plaintiff's Amended Complaint.

## **Count 2**

### **Fraud and Fraudulent Misrepresentation**

49. Defendant denies the allegations contained in Paragraph 49 of Plaintiff's Amended Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of Plaintiff's Amended Complaint.

51. Defendant denies the allegations contained in Paragraph 51 of Plaintiff's Amended Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of Plaintiff's Amended Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of Plaintiff's Amended Complaint.

54. Defendant denies the allegations contained in Paragraph 54 of Plaintiff's Amended Complaint.

**Count 3**  
**Fraudulent Inducement by Dorin**

55. Defendant denies the allegations contained in Paragraph 55 of Plaintiff's Amended Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint.

**Count 4**  
**Breach of Implied Warranty of Use of Reasonable Skill**  
**by Dorin and Taylor**

57. The allegations contained in Paragraph 57 constitute legal conclusions, not allegations of fact, which Defendant is not obligated to admit or deny. To the extent a further answer is required, Defendant denies the same.

58. The allegations contained in Paragraph 58 constitute legal conclusions, not allegations of fact, which Defendant is not obligated to admit or deny. To the extent a further answer is required, Defendant denies the same.

59. With respect to Paragraph 59 of Plaintiff's Amended Complaint, Defendant admits oophorectomy was not performed but denies the remaining allegations in that Paragraph.

**Count 5**  
**Breach of Duty of Good Faith and Fair Dealing by Dorin**

60. Defendant denies the allegations contained in Paragraph 60 of Plaintiff's Amended Complaint.

61. Defendant denies the allegations contained in Paragraph 61 of Plaintiff's Amended Complaint.

62. Defendant denies the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint.

63. Defendant denies the allegations contained in Paragraph 63 of Plaintiff's Amended Complaint.

**Count 6**  
**Spoliation of Evidence by Dorin and Taylor**

64. With respect to Paragraph 64 of Plaintiff's Amended Complaint, Defendant admits oophorectomy was not performed but denies the remaining allegations in that Paragraph.

65. The allegations contained in Paragraph 65 of Plaintiff's Amended Complaint are directed at another party, and thus, no response is required of this Defendant. To the extent a response is required, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.

66. The allegations contained in Paragraph 65 of Plaintiff's Amended Complaint are directed at another party, and thus, no response is required of this Defendant. To the extent a response is required, this Defendant is without sufficient information

or knowledge to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.

67. Defendant denies the allegations contained in Paragraph 67 of Plaintiff's Amended Complaint.

68. Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Amended Complaint.

69. Defendant denies the allegations contained in Paragraph 69 of Plaintiff's Amended Complaint.

70. Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Amended Complaint.

71. Defendant denies the allegations contained in Paragraph 71 of Plaintiff's Amended Complaint.

**Count 7**  
**Violations of Catherine's Civil Rights under 42 U.S.C. § 1983**  
**by Taylor and Beddow**

72. Defendant submits the allegations contained in Paragraph 72 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

73. With respect to Paragraph 73 of Plaintiff's Amended Complaint, Defendant admits that Defendants Taylor and Beddow were employees of the University of New Mexico School of Medicine but denies the remaining allegations in that Paragraph.

74. With respect to Paragraph 74 of Plaintiff's Amended Complaint, Defendant admits that Defendants Taylor and Beddow assisted with the surgery on September 21, 2018 but denies the remaining allegations in that Paragraph.

75. Defendant denies the allegations contained in Paragraph 75 of Plaintiff's Amended Complaint.

76. Defendant denies the allegations contained in Paragraph 76 of Plaintiff's Amended Complaint.

77. Defendant denies the allegations contained in Paragraph 77 of Plaintiff's Amended Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of Plaintiff's Amended Complaint.

79. With respect to Paragraph 79 of Plaintiff's Amended Complaint, Defendant admits that Defendants Taylor and Beddow were employees of the University of New Mexico but denies the remaining allegations in that Paragraph.

80. Defendant denies the allegations contained in Paragraph 80 of Plaintiff's Amended Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of Plaintiff's Amended Complaint.

**Count 8**  
**Battery on Catherine by Taylor and Beddow**

82. Defendant submits the allegations contained in Paragraph 82 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

83. Defendant denies the allegations contained in Paragraph 83 of Plaintiff's Amended Complaint.

84. Defendant denies the allegations contained in Paragraph 84 of Plaintiff's Amended Complaint.

**Count 9**

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

85. Defendant submits the allegations contained in Paragraph 85 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

86. Defendant denies the allegations contained in Paragraph 86 of Plaintiff's Amended Complaint.

87. Defendant denies the allegations contained in Paragraph 87 of Plaintiff's Amended Complaint.

88. Defendant denies the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint.

**Count 10**

**Gross Negligence by Dorin and Taylor**

89. Defendant submits the allegations contained in Paragraph 89 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

90. Defendant denies the allegations contained in Paragraph 90 of Plaintiff's Amended Complaint.

91. Defendant denies the allegations contained in Paragraph 91 of Plaintiff's Amended Complaint.

92. Defendant denies the allegations contained in Paragraph 92 of Plaintiff's Amended Complaint.

**Count 11**

**Intentional Infliction of Emotional Distress**

93. Defendant submits the allegations contained in Paragraph 93 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

94. Defendant denies the allegations contained in Paragraph 94 of Plaintiff's Amended Complaint.

95. Defendant denies the allegations contained in Paragraph 95 of Plaintiff's Amended Complaint.

96. Defendant denies the allegations contained in Paragraph 96 of Plaintiff's Amended Complaint.

97. Defendant denies the allegations contained in Paragraph 97 of Plaintiff's Amended Complaint.

**Count 12**  
**Negligent Misrepresentation**

98. Defendant submits the allegations contained in Paragraph 98 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

99. Defendant denies the allegations contained in Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendant denies the allegations contained in Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendant denies the allegations contained in Paragraph 101 of Plaintiff's Amended Complaint.

**Count 13**  
**Violations of the New Mexico Unfair Practices Act**

102. Defendant submits the allegations contained in Paragraph 102 of Plaintiff's Complaint are mere surplusage to which no response is necessary.

103. Defendant denies the allegations contained in Paragraph 103 of Plaintiff's Amended Complaint.

104. Defendant denies the allegations contained in Paragraph 104 of Plaintiff's Amended Complaint.

105. Defendant denies the allegations contained in Paragraph 105 of Plaintiff's Amended Complaint.

106. Defendant denies the allegations contained in Paragraph 106 of Plaintiff's Amended Complaint.

**Count 14**  
**Res Ipsa Loquitur**

107. Defendant submits the allegations contained in Paragraph 107 of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

108. Defendant denies the allegations contained in Paragraph 108 of Plaintiff's Amended Complaint.

109. Defendant denies the allegations contained in Paragraph 109 of Plaintiff's Amended Complaint.

110. Defendant denies the allegations contained in Paragraph 110 of Plaintiff's Amended Complaint.

**Relief Sought**

94. (sic) Defendant submits the allegations contained in Paragraph 94 (sic) of Plaintiff's Amended Complaint are mere surplusage to which no response is necessary.

95. (sic) Defendant denies the allegations contained in Paragraph 95 (sic) of Plaintiff's Amended Complaint.

### **SECOND DEFENSE**

The claims against Defendant Taylor and Defendant Beddow are barred under the doctrine of Qualified Immunity.

### **THIRD DEFENSE**

The claims against all Defendants are barred under the NMTCA including the doctrine of sovereign immunity granted to the State of New Mexico to the under the NMTCA per § 41-4-1 et seq.

### **FOURTH DEFENSE**

The claims in Plaintiffs' Amended Complaint are barred or reduced due to Plaintiff's failure to mitigate their damages.

### **FIFTH DEFENSE**

Plaintiff's claims are barred by contract, express warranty and lack of consideration.

### **SIXTH DEFENSE**

Plaintiff's claims are barred by the doctrine of waiver, estoppel laches, ratification, settlement, unclean hands and/or release.

### **SEVENTH DEFENSE**

Plaintiff's claims are barred by the doctrine of substantial performance.

**EIGHT DEFENSE**

Plaintiff's claims, insofar as they are directed at this Defendant, are barred because the conduct of others for whom this Defendant was not responsible, was the direct, actual and proximate cause of all or part of the Plaintiffs' claimed damages.

**NINTH DEFENSE**

Plaintiff's claims are barred as payment by Defendant would constitute unjust enrichment or economic waste.

**TENTH DEFENSE**

The damages claimed by the Plaintiff are barred and/or should be reduced under the doctrine of comparative fault and the fault of this Defendant, which is expressly denied, must be compared with the fault of all others whose acts or omissions were a legal, actual or proximate cause of any of Plaintiffs' claimed damages.

**ELEVENTH DEFENSE**

The damages claimed by the Plaintiff are barred and/or should be reduced as the claimed damages are the result of unforeseeable circumstances not reasonably expected by this Defendant.

**TWELFTH DEFENSE**

Plaintiff's claims are barred by the doctrine of independent intervening cause.

**THIRTEENTH DEFENSE**

Plaintiff's claims, insofar as they are directed at this Defendant, are barred because the conduct of this Defendant was not a substantial factor or material cause of the Plaintiffs' claimed damages.

**FOURTEENTH DEFENSE**

Plaintiff's claims are barred as the claims fail to state a claim upon which relieve can be granted.

**FIFTEENTH DEFENSE**

Plaintiff's claims are barred due to her failure to give notice.

**RESERVATION OF RIGHTS AND DEFENSES**

Defendant reserves the rights to assert any and all affirmative defenses available to her and revealed through discovery in this matter, Defendant has not knowingly or intentionally waived any affirmative defenses. Defendant reserves the right to supplement and/or amend this answer and additionally reserves the right to assert any claims, counterclaims, cross-claims, third-party claims and/or defenses he may have based upon further investigation and discovery in this matter.

**WHEREFORE**, Defendant prays that the Court dismiss Plaintiff's Catherine Juarez in its entirety and grant further relief as deemed just, proper and equitable.

Respectfully submitted,

RILEY, SHANE & KELLER, P.A.

By: /s/ Mark J. Riley

**MARK J. RILEY**

**DANIEL “CHET” ALDERETE**

3880 Osuna Road, NE

Albuquerque, NM 87109

(505) 883-5030

[mriley@rsk-law.com](mailto:mriley@rsk-law.com)

[tkaselonis@rsk-law.com](mailto:tkaselonis@rsk-law.com)

*Attorneys for Betsy Taylor, M.D.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 13<sup>th</sup> 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:

Lynn S. Sharp  
Maria M. Siemel  
**Sharp Law Firm**  
P.O. Box 16270  
Albuquerque, NM 87191  
(505) 842-5050  
[LynnS@SharpAttorneys.com](mailto:LynnS@SharpAttorneys.com)  
[Maria@SharpAttorneys.com](mailto:Maria@SharpAttorneys.com)

Luis B. Juarez  
1822 Lomas Blvd NW  
Albuquerque, NM 87104  
(505) 429-4177  
[LBJuarez@CyberMesa.com](mailto:LBJuarez@CyberMesa.com)

By: /s/ Mark J. Riley  
MARK J. RILEY  
DANIEL "CHET" ALDERETE