

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

**CATHERINE JUAREZ,**

**Plaintiff,**

**v.**

**Case 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, and  
MAXINE DORIN, M.D. and  
BETSY TAYLOR, M.D. and  
MEGHAN BEDDOW, M.D. and  
JOHN AND JANE DOES 1-20**

**Defendants.**

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**SECOND 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**

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**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, and violations of the New Mexico Unfair Practices Act.

2. This Second Amended Complaint withdraws and no longer includes any cause of action arising from a Federal Question or Original Federal Subject Matter Jurisdiction, as initial discovery has now demonstrated a lack of grounds for Plaintiff's prior asserted claim for Violations of 42 U.S.C. § 1983, and such claim, which was previously Count VII of the prior First Amended Complaint, is hereby withdrawn and no longer asserted.

3. This Second Amended Complaint is being filed as a matter of course or matter of right under Fed. R. Civ. 15(a)(1), based upon:

- a. Defendants' Acceptance of Service of Process for the First Amended Complaint was filed in State District Court on June 6, 2019.
- b. Defendants Notice of Notice of Removal was filed with this Honorable Court on June 6, 2019.
- c. Defendant Meghan Beddow's Answer to the First Amended Complaint was filed with this Honorable Court on June 13, 2019.
- d. Defendant Maxine Dorin's Answer to the First Amended Complaint was filed with this Honorable Court on June 13, 2019.
- e. Defendant Betsy Taylor's Answer to the First Amended Complaint was filed with this Honorable Court on June 13, 2019.

- f. Defendant's Board of Regents of the University of New Mexico and Defendant UNM Medical Group, Inc.'s Answer to the First Amended Complaint was filed with this Honorable Court on June 13, 2019.
- g. Defendant's FED.R.CIV.P.12(B)(6) Partial Motion to Dismiss Plaintiff's Claim Under the New Mexico Tort Claims Act was filed on June 13, 2017.
- h. Plaintiff's Second Amended Complaint is the first amended pleading which has been filed by Plaintiff before this Honorable Court.
- i. Plaintiff's Second Amended Complaint is being filed this 17<sup>th</sup> day of June, 2019 and is, therefore, within the requisite 21 days allowed by FED.R.CIV.P. 15(a)(1) following acceptance of service and the last responsive pleading filed by the Defendants and/or the service of a Rule 12 (b), (e), or (f) motion.

4. Absent any Federal Question or Original Federal Subject Matter Jurisdiction remaining in this Second Amended Complaint, this matter should be remanded to New Mexico State District Court, Second Judicial District, as will be sought by Plaintiff in a separate Motion to Remand.

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

6. 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.

7. 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.

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

9. 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.”

10. 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.

11. 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.

12. With the filing of this Second Amended Complaint, this Honorable Court now lacks subject matter jurisdiction over this case.

**Facts Common to All Counts**

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

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

15. 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.

16. 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.

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. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. This plan and contract between Dorin and Catherine was formalized and agreed upon and confirmed in writing, the agreement being then signed and executed by both Dorin and Catherine by means of a Surgical Consent Form dated September 4, 2019 which on its four corners was intended as, and in fact is, a valid written contract encompassing of the requisite elements of a valid signed contract in New Mexico.

24. After the surgery, which upon information and belief, 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.

25. Catherine through her health insurance paid Dorin and the Defendants for those billed charges, thereby complying with the terms of the contract term for consideration. 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.

26. 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.

27. 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.

28. 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.

29. On September 4, 2018, Catherine was also presented with a Consent for Surgery Form 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, upon information and belief Dorin did not perform the September 21, 2018 surgery (hereinafter the surgery). There is no indication that Dorin was "*unable to*" perform this surgery. Notwithstanding not being involved, it was Dorin who fraudulently created and charted the intentionally false Operative Report for the surgery.

30. 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, mutuality having been reached, and consideration later paid as agreed upon.



31. In reliance upon Defendant Dorin's representations that she would be performing Catherine's 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.

32. 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.

33. 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.

34. Upon information and belief, all of the members of the surgical team, included the assisting attending, and the resident surgeon, repeatedly advised Dorin of the planned removal of the ovaries during the "time out" taken before the surgery, including showing Dorin the signed and executed Consent for Surgery Contract, and Dorin nonetheless refused to remove the ovaries, despite any medical contraindication or inability to do so.

35. Despite her knowing and reckless false representations to Catherine that she would be present at, perform and/or supervise Catherine's surgery, it appears at least 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 under these circumstances and, therefore, committed a battery upon Catherine.

36. In flagrant breach of the Consent For Surgery contract with Catherine, Dorin failed to perform or attend Catherine's Septemebr 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.

37. 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 sugery.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. It has also been subsequently discovered that despite the withholding of the pathology report, other key and significant portions of her medical records have been withheld from Catherine by Defendants.

44. 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.

45. Catherine has suffered severe and ongoing injuries and damages as a result of the negligence of the Defendants, faces the unsure prospects of yet another surgery, has suffered the battery by the Defendant Doctors, and the breach of contract by the Defendant Doctors and the Defendant Staff.

**COUNT 1**

**Breach of Contract by Dorin**

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

47. 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. This Consent for Surgery Contract which was accepted by Catherine, agreed upon and signed by both Dorin and Catherine, and for which there was mutuality and consideration, and then which was neither modified nor repudiated by either party. This constituted a valid written contract on its face and on its four corners containing all of the requisite elements for a valid written contract in New Mexico as between Dorin and Catherine

48. 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.

49. 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 and to remove her ovaries as contractually obligated.

50. 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.

51. 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.

52. 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.

53. This Breach of a Valid Written Contract is not a claim which falls under the purview, caps, or limitations of the New Mexico Tort Claims Act.

54. 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**

55. 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.

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

57. 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.

58. 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.

59. 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.

60. 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**

61. 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.

62. 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**

63. 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 .

64. 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.

65. 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**

66. 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.

67. 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.

68. 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.

69. 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**

70. 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.

71. 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.

72. 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.



73. 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.

74. 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.

75. 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.

76. 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.

77. 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**

### **Battery on Catherine by Taylor and Beddow**

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

79. 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 given the express terms of the Consent for Surgery Contract entered into between Dorin and Catherine.

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

**Count 8**

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

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

82. 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.

83. 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.

84. 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 9**

**Gross Negligence by Dorin and Taylor**

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

86. 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.

87. 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.

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

**COUNT 10**

**Intentional Infliction of Emotional Distress**

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

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

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

92. 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.

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

### **COUNT 11**

#### **Negligent Misrepresentation**

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

95. 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.

96. 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.

97. 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 12**

#### **Violations of the New Mexico Unfair Practices Act**

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

99. 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).

100. 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).

101. 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).

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

### **COUNT 13**

#### **Res Ipsa Loquitur**

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

104. 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.

105. 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.

106. 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**

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

101. WHEREFORE, 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

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)

ATTORNEYS FOR PLAINTIFF

Also as Attorney for Plaintiff

Luis B. Juarez

1822 Lomas Blvd NW

Albuquerque, New Mexico 87104

(505) 429-4177

[LBJuarez@CyberMesa.com](mailto:LBJuarez@CyberMesa.com)