

SECOND JUDICIAL DISTRICT COURT
COUNTRY OF BERNALILLO
STATE OF NEW MEXICO

FILED
2nd JUDICIAL DISTRICT COURT
Bernalillo County
10/24/2018 10:08 AM
James A. Noel
CLERK OF THE COURT
Edna Kasuse

TINA ATKINS, Individually and as Personal Representative of
the ESTATE of KEISHA MARIE ATKINS, and NICOLE
ATKINS,

Plaintiffs,

v.

No. D-202-CV-2018-05696

CURTIS BOYD, M.D. P.C. d/b/a SOUTHWESTERN
WOMEN'S OPTIONS, CURTIS W. BOYD, Individually,
CARMEN LANDAU, Individually, SHANNON CARR,
Individually, THE UNIVERSITY OF NEW MEXICO d/b/a
UNMH HEALTH SYSTEM, THE UNIVERSITY OF NEW
MEXICO BOARD OF REGENTS, THE UNIVERSITY OF
NEW MEXICO HEALTH SCIENCES CENTER, LISA
HOFLER, M.D., Individually, UNM MEDICAL GROUP,
INC., LILY BAYAT, M.D., Individually, and BRENDA
PEREDA, M.D., Individually, LAUREN DVORSCAK, M.D.,
Individually.

Defendants.

**ANSWER OF DEFENDANT BRENDA PEREDA, M.D. TO PLAINTIFFS' COMPLAINT
FOR MEDICAL MALPRACTICE/MEDICAL NEGLIGENCE, WRONGFUL DEATH,
UNFAIR TRADE PRACTICES, CIVIL CONSPIRACY**

Defendant, Brenda Pereda, M.D. (hereinafter referred to as "Dr. Pereda"), by and through
their attorneys of record, Riley, Shane & Keller, PA. (Mark J. Riley and David A. Gonzales), and
for their Answer to Plaintiffs' Complaint for Medical Malpractice/Medical Negligence Wrongful
Death, Unfair Trade Practices, and Civil Conspiracy ("Complaint"), state as follows:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should be
dismissed with prejudice as a matter of law.

SECOND DEFENSE

Dr. Pereda responds to the individual allegations of Plaintiffs' Complaint as follows:

Introduction/Jurisdictional Allegations

1. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

2. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

3. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

4. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

5. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

6. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

7. With regards to the allegations of Paragraphs 7, 8 and 9 of Plaintiffs' Complaint, it is admitted that at all material times as specifically relates to this lawsuit, BORUNM acted for its public operation known as the Health Sciences Center, specifically for the University of New

Mexico Hospital, and The University of New Mexico, and that the principal offices of the University of New Mexico are located in the City of Albuquerque, County of Bernalillo, State of New Mexico. *See* N.M. Const., Art., XII, § 11. In response to the remaining allegations of Paragraphs 7, 8 and 9 of Plaintiffs' Complaint, Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraphs 7, 8 and 9 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof

8. In response to the allegations of Paragraphs 10 and 11, Dr. Pereda denies that Defendants Lisa Hofler, M.D. and Lauren Dvorscak, M.D. were officers, directors and/or agents of Defendant BORUNM. Upon information and belief, Dr. Pereda admits the remaining allegations contained in Paragraphs 10 and 11 of Plaintiffs' Complaint.

9. Dr. Pereda admits the truth of the allegations contained in Paragraph 12 of Plaintiffs' Complaint.

10. Upon information and belief, Dr. Pereda admits that Defendants Bayat and Pereda were employees of BORUNM acting in the course and scope of their employment regarding treatment, if any, of Keisha Marie Atkins. With regards to the remainder of the allegations of Paragraph 13, Dr. Pereda denies the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and, therefore, demands strict proof thereof.

11. Upon information and belief, Dr. Pereda admits to the allegations contained in Paragraphs 14 and 15 of Plaintiffs' Complaint and further states Defendants Hofler, Bayat and Pereda were covered and protected by the New Mexico Tort Claims Act.

12. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

General Allegations

13. Upon information and belief, Dr. Pereda admits to the allegations contained in Paragraph 17 of Plaintiffs' Complaint that Keisha Marie Atkins presented to the OBGYN clinic at UNMH on January 23, 2017 and that she presented as an emergency room patient on February 3, 2017. Dr. Pereda otherwise denies the allegations in Paragraph 17 of Plaintiffs' Complaint.

14. With regards to the allegations of Paragraph 18, it is admitted that Defendant Bayat declined offering medical treatment to Keisha Marie Atkins for an elective abortion based upon UNMH policy. Dr. Pereda denies the remainder of the allegations contained in Paragraph 18 and demands strict proof thereof.

15. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraphs 19 – 26 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

16. Upon information and belief, Dr. Pereda admits to the allegations contained in Paragraph 27 of Plaintiffs' Complaint that Keisha Marie Atkins arrived at UNMH emergency room on February 3, 2017, but otherwise denies the allegations therein and demands strict proof thereof.

17. With regards to the allegations of Paragraph 28, it is admitted that Keisha Marie Atkins was under the care of Defendant Hofler, on February 3, 2017 as an employee of Defendant UNM acting in the course and scope of here employment. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 28, and, therefore, denies the same and demands strict proof thereof.

18. Dr. Pereda admits that Keisha Marie Atkins was transferred to an operating room on February 3, 2017 and passed on February 4, 2017, but otherwise lacks sufficient information

or knowledge to form a belief as to the truth of the allegations contained in Paragraphs 29 – 30 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

19. Dr. Pereda denies the allegations contained in Paragraph 31 of Plaintiffs' Complaint, and, therefore denies the same and demands strict proof thereof. Defendant Dvorscak was assigned to the Office of the Medical Investigator ("OMI").

**Count I – Negligent Medical Referral of
Defendants Bayat, Pereda and UNM**

20. Dr. Pereda submits the content of Paragraph 32 is mere surplusage to which no response is necessary.

21. Dr. Pereda denies the allegations contained in Paragraphs 33 – 35, including all subparts, of Plaintiffs' Complaint and demands strict proof thereof.

22. With regards to the allegations of Paragraph 36 of Plaintiffs' Complaint, it is admitted that Defendants Bayat and Pereda were employees of BORUNM acting in the course and scope of employment regarding medical treatment, if any, of Keisha Marie Atkina. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 36, and, therefore, denies the same and demands strict proof thereof.

23. Dr. Pereda denies the allegations contained in Paragraphs 37 – 39, including all subparts, of Plaintiffs' Complaint and demands strict proof thereof.

**Count II- Medical Negligence of Defendants
Landau, Carr, Boyd and SWO**

24. Dr. Pereda submits the content of Paragraph 40 is mere surplusage to which no response is necessary.

25. In regard to the allegations contained in Paragraphs 41 – 47, those allegations are

not directed at Dr. Pereda and therefore no response is necessary. To the extent a response is deemed necessary, Dr. Pereda denies the allegations contained in Paragraphs 41 – 47 and demands strict proof thereof.

**Count III – Medical Negligence of
Defendant Lisa Hofler**

26. Dr. Pereda submits the content of Paragraph 48 is mere surplusage to which no response is necessary.

27. Dr. Pereda denies the allegations contained in Paragraphs 49 – 54, including all subparts, of Plaintiffs' Complaint and demands strict proof thereof, except that Dr. Pereda admits that Defendant Hofler was an employee of UNMH acting in the course and scope of her employment as alleged in Paragraph 51.

**Count IV – Respondeat Superior
Defendant Boyd d/b/a "Southwestern Women's Options"**

28. Dr. Pereda submits the content of Paragraph 55 is mere surplusage to which no response is necessary.

29. In regard to the allegations contained in Paragraphs 56 – 60, those allegations are not directed at Dr. Pereda and therefore no response is necessary. To the extent a response is deemed necessary, Dr. Pereda denies the allegations contained in Paragraphs 56 – 60 and demands strict proof thereof.

**Count V- Respondeat Superior
Defendant UNM**

30. Dr. Pereda submits the content of Paragraph 61 is mere surplusage to which no response is necessary.

31. With regards to the allegations of Paragraphs 62, 63, 64 and 65 of Plaintiffs' Complaint, it is admitted that Defendants Hofler was an employee of BORUNM. Dr. Pereda lacks

sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraphs 62-66, and, therefore, denies the same and demands strict proof thereof.

**Count VI - Respondeat Superior
Defendant UNM Medical Group**

32. Dr. Pereda submits the content of Paragraph 67 is mere surplusage to which no response is necessary.

33. With regards to the allegations of Paragraph 68 of Plaintiffs' Complaint, it is admitted that Defendants Bayat and Pereda were employees of BORUNM in the course and scope of employment and authorized to practice medicine. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 68, and, therefore, denies the same and demands strict proof thereof.

34. Dr. Pereda lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraphs 69 – 70 of Plaintiffs' Complaint, and, therefore, denies the same and demands strict proof thereof.

35. Dr. Pereda denies the allegations contained in Paragraphs 71 – 72, including all subparts, of Plaintiffs' Complaint and demands strict proof thereof.

Count VII – Unfair Trade Practices

36. Dr. Pereda submits the content of Paragraph 73 is mere surplusage to which no response is necessary.

37. In regard to the allegations contained in Paragraphs 74 – 78, those allegations are not directed at Dr. Pereda and therefore no response is necessary. To the extent a response is deemed necessary, Dr. Pereda denies the allegations contained in Paragraphs 74 – 78 and demands strict proof thereof.

Count VIII – Unconscionable Trade Practices

38. Dr. Pereda submits the content of Paragraph 79 is mere surplusage to which no response is necessary.

39. In regard to the allegations contained in Paragraphs 80 – 88, those allegations are not directed at Dr. Pereda and therefore no response is necessary. To the extent a response is deemed necessary, Dr. Pereda denies the allegations contained in Paragraphs 80 – 88 and demands strict proof thereof.

Count IX – Civil Conspiracy

40. Dr. Pereda submits the content of Paragraph 89 is mere surplusage to which no response is necessary.

41. Dr. Pereda denies that the allegations contained in Paragraph 90-96 are directed at itself or that any response is required. To the extent any response is required, Dr. Pereda denies these allegations of Plaintiffs' Complaint and demands strict proof thereof.

Count X – Loss of Consortium

42. Dr. Pereda submits the content of Paragraph 97 is mere surplusage to which no response is necessary.

43. Dr. Pereda denies the allegations contained in Paragraphs 98 – 102 of Plaintiffs' Complaint and demands strict proof thereof.

THIRD DEFENSE

Plaintiffs' claims are barred 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.

FOURTH DEFENSE

Defendants possessed and applied the knowledge, used the skill and care ordinarily used by reasonable well-qualified physicians under similar circumstances given due consideration to the locality involved.

FIFTH DEFENSE

Plaintiffs' claims are barred or should be reduced insofar as this Defendant did not cause any damage or injury to Plaintiffs.

SIXTH DEFENSE

Plaintiffs' claims are barred as she passed due to a pre-existing condition.

SEVENTH DEFENSE

Plaintiffs' claims must be barred or reduced because the conduct complained of was not the legal cause of any damages or injuries to Plaintiffs.

EIGHTH DEFENSE

Plaintiffs' claims are barred because, at all material times, the actions of this Defendant were lawful, reasonable, proper, in good faith, and without malice.

NINTH DEFENSE

The claims made and the damages claims by Plaintiffs are barred, and/or are governed by and/or limited under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30 (1978) ("NMTCA").

TENTH DEFENSE

The legal cause of Plaintiffs' injuries, which are expressly denied, is due to pre-existing conditions not caused, created or aggravated by these Defendants for which these Defendants are not liable.

ELEVENTH DEFENSE

Plaintiffs' claims are barred or should be reduced under the doctrine of independent intervening cause.

TWELFTH DEFENSE

Plaintiffs' claims for punitive damages are barred under the Tort Claim Act, NMSA 41-4-1 et seq. (1978), and the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and by the New Mexico Constitution insofar as those provisions prohibit the improper taking of property, cruel and unusual punishment, and denial of due process and equal protection of the laws.

THIRTEENTH DEFENSE

Plaintiffs' claims for pre-judgment interest, post-judgment interest and attorney fees are barred by the NMTCA.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred because she failed to mitigate her damages.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred or should be reduced insofar as the claimed damages were caused by the acts/omissions of third-persons not under the direction, control and/or supervision of this Defendant and/or over whom this Defendant had no ability or duty to control.

SIXTEENTH DEFENSE

Plaintiffs' claims should be dismissed as the claims are barred by the applicable statute of limitations, the failure to provide notice under the New Mexico Tort Claims Act and/or the doctrine of laches.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred under the doctrine of waiver, estoppel, and unclean hands.

EIGHTEENTH DEFENSE

Plaintiffs' claims are barred in that this Defendant complied with and fully performed all statutory and common law duties owed to Plaintiffs under New Mexico law.

NINETEENTH DEFENSE

Plaintiffs' claims are barred or should be reduced insofar as this Defendant breached no duty owed to Plaintiffs.

TWENTIETH DEFENSE

At all material times, Defendants possessed and applied the knowledge and used the skill and care ordinarily used by reasonably well-qualified healthcare providers and hospitals under similar circumstances, given due consideration to the locality involved.

TWENTY-FIRST DEFENSE

Plaintiffs' claims are barred under the Political Question Doctrine wherein the issues to be addressed in this case should be addressed by the state legislature and not the courts.

TWENTY-SECOND DEFENSE

Plaintiffs' claims are barred as they involve matters that do not involve a justiciable controversy, which can be decided by this Court.

RESERVATION OF RIGHTS

Dr. Pereda reserves the right to assert any and all affirmative defenses available to it under NMRA 1-012 and/or revealed through discovery in this matter, Dr. Pereda has not knowingly or intentionally waived any affirmative defenses. Dr. Pereda 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 it may have based upon further investigation and discovery in this matter.

Insofar as any factual allegations were left without response herein, or any responses by this Defendant are deemed by the Court to be insufficient, then said allegations are hereby denied.

WHEREFORE, Dr. Pereda prays that the Court dismiss Plaintiffs' Complaint in its entirety and grant further relief as deemed just, proper and equitable.

RILEY, SHANE & KELLER, P.A.

By: /s/ Mark J. Riley (electronically filed)

MARK J. RILEY

DAVID A. GONZALES

Attorney for Defendant Hofler

3880 Osuna Rd., NE

Albuquerque, NM 87109

(505) 883-5030

I hereby certify that I filed the foregoing pleading on October 24, 2018 electronically through the Court's electronic filing system, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Mark J. Riley

MARK J. RILEY