

**MALPRACTICE**  
COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK, SS.

SUPERIOR COURT

Civil Action No.: SUCV2009-01808-A

KIMBERLY NORTON and	)
ROBERT NORTON,	)
Plaintiffs	)
	)
v.	)
	)
STEVEN J. RALSTON, M.D. and	)
JANE DOE, R.N.,	)
Defendants	)
	)

2009 JUN 29 PM 12:09  
CLERK OF SUPERIOR COURT

**ANSWER OF THE DEFENDANTS,  
STEVEN J. RALSTON, M.D. AND JANE DOE, R.N.,  
TO THE PLAINTIFFS' COMPLAINT AND DEMAND FOR JURY TRIAL**

I. THE PARTIES

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Plaintiffs' Complaint and so denies the same and calls upon the Plaintiffs for proof.

2. Admitted.

3. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Plaintiffs' Complaint and so denies the same and calls upon the Plaintiffs for proof.

II. GENERAL FACTUAL ALLEGATIONS

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Plaintiffs' Complaint and so denies the same and calls upon the Plaintiffs for proof.

5. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Plaintiffs' Complaint and so denies the same and calls upon the Plaintiffs for proof.

6. The Defendants admit that Dr. Ralston provided medical treatment to Kimberly Norton on May 18, 2006.

7. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

8. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the Plaintiffs' Complaint and so denies the same and calls upon the Plaintiffs for proof.

9. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

10. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

### III. CAUSES OF ACTION

#### COUNT I

Negligence/Personal Injury  
(Dr. Ralston)

12. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

13. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

14. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

15. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

#### COUNT II

Breach of Contract  
(Dr. Ralston)

16. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 15 as if specifically set forth herein.

17. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

18. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

19. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

20. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

COUNT III  
Informed Consent  
(Dr. Ralston)

21. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 20 as if specifically set forth herein.

22. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

23. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

24. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

COUNT IV  
Loss of Consortium  
(Dr. Ralston)

25. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 24 as if specifically set forth herein.

26. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.



COUNT V  
Negligence/Personal Injury  
(Jane Doe, R.N.)

27. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 26 as if specifically set forth herein.

28. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

29. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

30. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

31. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

COUNT II [SIC]  
Breach of Contract  
(Jane Doe, R.N.)

32. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 31 as if specifically set forth herein.

33. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

34. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

35. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

36. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

COUNT III [SIC]  
Informed Consent  
(Jane Doe, R.N.)

37. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 36 as if specifically set forth herein.

38. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

39. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

40. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

COUNT IV [SIC]  
Loss of Consortium  
(Jane Doe, R.N.)

41. The Defendants repeat and incorporate by reference each response to paragraphs 1 through 40 as if specifically set forth herein.

42. The Defendants deny the allegations contained in this paragraph of the Plaintiffs' Complaint.

WHEREFORE, the Defendants demand that judgment enter in their behalf together with costs.

GENERAL STATEMENT

The following affirmative defenses are pled in accordance with the requirements of the Massachusetts Rules of Civil Procedure and to provide the Plaintiffs and their attorney with notice that these affirmative defenses will be relied upon if evidence is developed during discovery to support the affirmative defenses. If evidence is not developed during discovery to support an affirmative defense, such defense will be waived.

## AFFIRMATIVE DEFENSES

### FIRST AFFIRMATIVE DEFENSE

The Defendants say that if the Plaintiffs were injured or damaged as alleged, the Plaintiffs assumed the risk of such injuries or damages.

### SECOND AFFIRMATIVE DEFENSE

The acts complained of were not committed by a person for whose conduct the Defendants were legally responsible.

### THIRD AFFIRMATIVE DEFENSE

The Plaintiffs are barred from recovery under the applicable Statute of Limitations.

### FOURTH AFFIRMATIVE DEFENSE

If the Defendants were negligent, which they deny, the Plaintiffs sustained no damage by reason of any negligence of the Defendants, and, therefore, cannot recover in this action.

### FIFTH AFFIRMATIVE DEFENSE

The Defendants says that if the Plaintiffs sustained the injuries alleged, they occurred as the result of negligence on the part of the Plaintiffs which was greater in degree than any negligence of Steven J. Ralston, M.D. and/or Jane Doe, R.N. by reason of which recovery is barred.

### SIXTH AFFIRMATIVE DEFENSE

The Defendants says that any damages assessable against the Defendants must be reduced by the percentage of negligence attributable to the Plaintiffs in accordance with G.L. c. 231, § 85.

### SEVENTH AFFIRMATIVE DEFENSE

The Defendants say that if the Plaintiffs underwent the medical procedure alleged, they did so after having been fully informed and made aware of any known risks or uncertainties involved in said procedures, and that after being so informed, they exercised their informed consent to the performance of the procedures.

WHEREFORE, the Defendants demands that judgment in their behalf together with costs.



The Defendants Reserve The Right To Assert Additional Affirmative Defenses Upon Completion Of Discovery.

The Defendants Demand A Trial By Jury On All Claims And Issues.

Respectfully Submitted,  
STEVEN J. RALSTON, M.D. and  
JANE DOE, R.N.,  
The Defendants, By Their Attorneys,



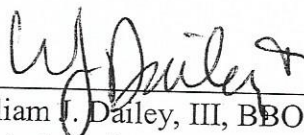
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Date: 6-26-09

CERTIFICATE OF SERVICE

I, William J. Dailey, III, Esq. and/or Nicole J. Todesco, Esq., hereby certify that on June 26, 2009, I served a true copy of the foregoing document, upon the following parties of record, by first class mail, postage prepaid, to:

Kevin Donius, Esq.  
LAW OFFICES OF  
KEVIN DONIUS, P.C.  
424 Adams Street, Suite 100  
Milton, MA 02186



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