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**pursuant to HCRR Rule 9**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN  
TAN, M.D.; SELENA PETERS, M.D.;  
MERLA TAKENAKA RN; KAPIOLANI  
MEDICAL SPECIALISTS; KAPIOLANI  
MEDICAL CENTER FOR WOMAN AND  
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (JHA)

**INFORMATION DESIGNATED  
CONFIDENTIAL PURSUANT TO  
RULES 2.19 AND 9 OF THE HAWAII  
COURT RECORDS RULES**

MEMORANDUM AND EXHIBIT B TO  
DEFENDANTS PATRICK J. O'DONNELL,  
M.D.; SUSAN TAN, M.D.; AND  
KAPI'OLANI MEDICAL SPECIALISTS'  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF JARED JAMES' MOTION FOR  
DECLARATORY JUDGMENT, IN THE  
ALTERNATIVE MOTION FOR  
JUDGMENT ON THE PLEADINGS FILED  
JULY 2, 2024 [DKT. 98]

**Hearing:**

Date: August 28, 2024

Time: 1:00 p.m.

Judge: Honorable Shirley M. Kawamura

No trial date set

**\*\*\* CONFIDENTIAL INFORMATION \*\*\***

**LIST OF ALL CONFIDENTIAL INFORMATION:**

| Document File Date | Reference Document                 | Type of Information                           | Complete Information                                                                                                                                                                         | Authority for Confidentiality                              |
|--------------------|------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| 8/20/24            | Memorandum in Opposition to Motion | Health and medical information of Jared James | Factual background and health and medical information                                                                                                                                        | Hawai'i Court Records Rules ("HCRR") 2.19 and 9, and HIPAA |
| 8/20/24            | Exhibit "B"                        | Health and medical information of Jared James | [Sealed] Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; and Kapi'olani Medical Specialists' Answer to Amended Complaint, Filed May 26, 2023 [Dkt. 65], filed June 20, 2023 [Dkt.84] | HCRR 2.19 and 9, and HIPAA                                 |

DATED: Honolulu, Hawai'i, August 20, 2024.

/s/ John-Anderson L. Meyer

JOHN-ANDERSON L. MEYER

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SPECIALISTS

**FILED UNDER SEAL**  
**pursuant to HCRR Rule 9**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN  
TAN, M.D.; SELINA PETERS, M.D.;  
MERLA TAKENAKA RN; KAPIOLANI  
MEDICAL SPECIALISTS; KAPIOLANI  
MEDICAL CENTER FOR WOMAN AND  
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (SMK)

**DEFENDANTS PATRICK J.  
O'DONNELL, M.D.; SUSAN TAN, M.D.;  
AND KAPI'OLANI MEDICAL  
SPECIALISTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFF JARED  
JAMES' MOTION FOR  
DECLARATORY JUDGMENT, IN THE  
ALTERNATIVE MOTION FOR  
JUDGMENT ON THE PLEADINGS  
FILED JULY 2, 2024 [DKT. 98];  
DECLARATION OF JOHN-ANDERSON  
MEYER; EXHIBITS "A" – "B";  
CERTIFICATE OF SERVICE**

**Hearing:**

Date: August 28, 2024

Time: 1:00 p.m.

Judge: Honorable Shirley M. Kawamura

No trial date set

**DEFENDANTS PATRICK J. O'DONNELL, M.D.; SUSAN TAN, M.D.;  
AND KAPI'OLANI MEDICAL SPECIALISTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFF JARED JAMES' MOTION FOR DECLARATORY  
JUDGMENT, IN THE ALTERNATIVE MOTION FOR JUDGMENT  
ON THE PLEADINGS FILED JULY 2, 2024 [DKT. 98]**

**I. INTRODUCTION**

Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; and Kapi'olani Medical Specialists ("KMS Defendants") oppose<sup>1</sup> Plaintiff Jared James' Motion for Declaratory Judgment; in the Alternative Motion for Judgment on the Pleadings, filed on July 2, 2024 [Dkt. 98] ("Motion")<sup>2</sup>.

KMS Defendants' Answer responds to the allegations in the Complaint in a manner such that Plaintiff can readily discern from the Answer KMS Defendants' position with respect to the allegations in his 105-paragraph First Amended Complaint (not including unnumbered and numbered subparts) that is replete with compound sentences, partial and/or incorrect references to medical records, citations to various statutes and rules, and partial quotes to other information not contained in the medical records.

KMS Defendants respectfully request that this Court deny Plaintiff's Motion so that the parties can litigate the merits of this case. Alternatively, if the Court is inclined to grant Plaintiff's Motion, KMS Defendants request leave to file an amended Answer.

**II. RELEVANT BACKGROUND**

On May 26, 2023 Plaintiff filed his FAC alleging: (1) conspiracy to commit fraud; (2) conspiracy to commit assault in the first degree; (3) conspiracy to commit unlawful imprisonment in the first degree; (4) medical malpractice; (5) intentional infliction of emotional distress; (6) product liability; (7) unnecessary actions; (8) breach of contract; (9) false statements relating to health care matters; (10) racketeer influenced and corrupt organizations; and

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<sup>1</sup> On August 20, 2024 Plaintiff filed an Application for Default Judgment for Plaintiff Jared James' Motion for Declaratory Judgment in the Alternative Motion for Judgment on the Pleadings (Dkt. 110). The deadline to file a response to this Motion is August 20, 2024, and this Opposition will be filed on August 20, 2024. Therefore, KMS Defendants' Opposition is timely, and Plaintiff's Application for Default Judgment should be denied.

<sup>2</sup> On August 16, 2024 Plaintiff filed a motion for leave to file a second amended complaint (Dkt. 107). This Motion for Declaratory Judgment; in the Alternative Motion for Judgment on the Pleadings is based on the FAC. KMS Defendants will respond to that Motion in due course. If the Court is inclined to grant Plaintiff's motion for leave to file a second amended complaint, this Motion is moot.

(11) conspiracy against rights. *See generally*, Ex. A, FAC. Plaintiff has not further amended his pleadings.

On June 20, 2023 KMS Defendants filed their Answer to Plaintiff's FAC. Ex. B, Answer (Dkt. 82). In their Answer, KMS Defendants specifically admitted certain facts, either specifically or generally denied certain allegations, and/or stated that they were without information sufficient to respond to certain allegations. *Id.*

On July 2, 2024—over one year later and without having made any further steps to prosecute his claims—Plaintiff filed this belated Motion.

### III. ARGUMENT

#### A. Plaintiff's Motion is Procedurally Improper.

Hawai'i Circuit Court Rule 7.1 states: "Memoranda in support of or in opposition to any motion shall not exceed 20 pages in length...Memoranda exceeding 15 pages shall have a table of contents and a table of authorities." Plaintiff's memorandum is 24 pages and lacks both a table of contents and a table of authorities. KMS Defendants ask the Court to strike pages 21-24 of Plaintiff's Motion.

#### B. Plaintiff's "Motion for Declaratory Judgment" is Improper.

Plaintiff's "Motion for Declaratory Judgment" is improper because his FAC does not contain a claim or prayer for declaratory relief. It is well-settled that a claim for declaratory judgment is a civil **action** (HRCF Rule 57 ("The court may order a speedy hearing of an **action for a declaratory judgment....**") (emphasis added)); *see also* *Lieblong v. Abella*, 503 F. Supp. 3d 1011, 1022 (D. Haw. 2020) ("a party may not make a **motion** for declaratory relief, but rather, the party must bring an **action** for a declaratory judgment.") (emphasis added). Thus, Plaintiff should have brought an action or included a claim for declaratory judgment in his FAC.

Plaintiff's FAC alleges (1) conspiracy to commit fraud; (2) conspiracy to commit assault in the first degree; (3) conspiracy to commit unlawful imprisonment in the first degree; (4) medical malpractice; (5) intentional infliction of emotional distress; (6) product liability; (7) unnecessary actions; (8) breach of contract; (9) false statements relating to health care matters; (10) racketeer influenced and corrupt organizations; and (11) conspiracy against rights (*see generally*, Ex. A, FAC), none of which constitute a claim for declaratory judgment. Plaintiff has not further amended his FAC to include a claim for declaratory judgment, thus, his "Motion for Declaratory Judgment" should be denied on that basis alone. Even if Plaintiff's motion properly

sought relief, the basis of Plaintiff's motion, which is his interpretation of HRCP Rule 8, is wrong.

Actions for declaratory judgments are authorized by HRS § 632–1. That statute states in relevant part as follows: “Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties ... and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.” *Island Ins. Co. v. Perry*, 94 Hawaii 498, 502, 17 P.3d 847, 851 (Ct. App. 2000), *as amended* (Feb. 15, 2001). HRCP Rule 57 states in relevant part that “[t]he procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules.” “[T]he court may, after a full consideration of the merits, exercise its discretion to refuse to grant declaratory relief because the state of the record is inadequate to support the extent of relief sought.” *United States v. State of Wash.*, 759 F.2d 1353, 1356 (9th Cir. 1985). Based on the substance of Plaintiff's FAC, there is no ongoing actual controversy between the parties as to which declaratory relief can apply—Plaintiff's claims concern alleged completed actions taken in the *past*. There is no ongoing existing controversy subject to declaratory judgment.

Nothing within the clear language of HRCP Rule 8 indicates that KMS Defendants' Answer is insufficient. In addition, this is a medical negligence action. “A claim based on negligent or intentional acts is *not appropriate* for decision in a declaratory judgment action.” *Douglas v. Don King Prods., Inc.*, 736 F. Supp. 223, 225 (D. Nev. 1990) (emphasis added); *see also Flashner Med. P'ship v. Mktg. Mgmt., Inc.*, 189 Ill. App. 3d 45, 54, 545 N.E.2d 177, 183 (1989) (finding that claims for breach of contract, fraud, and negligence were not proper subjects for a declaratory judgment). Plaintiff's Motion is inappropriate and lacks facts or evidence to support his “Motion for Declaratory Judgment,” and his request should be denied.

**C. Plaintiff's Motion to Strike is Untimely and Unwarranted Because The Answer is Sufficient.**

Although it is not clear from Plaintiff's Motion, KMS Defendants interpret the Motion as a Motion to Strike certain paragraphs in KMS Defendants' Answer which contain denials on the basis that (1) “the medical records speak for themselves and [KMS Defendants] deny the allegations to the extent they misstate the medical records,” and (2) to the extent the allegations “allege any error, omission, negligence, or failure to obtain informed consent by Defendants”; he further requests that such ambiguous allegations be deemed admitted. *See* Memo in Support of

Motion (“Memo”) at 11-12; *see also*, Ex. B, Answer to FAC. This portion of Plaintiff’s Motion also lacks merit and should be denied.

Under HRCF Rule 12(f):

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party ***within 20 days after the service of the pleading upon the party*** or upon the court's own initiative at any time, the court may order stricken from any pleading ***any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter***.

Emphasis added.

“Motions to strike are ‘generally disfavored’ and the court is instructed to view the challenged pleadings in a light most favorable to the non-moving party.” *See Redwood v. Dobson*, 476 F.3d 462, 471 (7th Cir. 2007)<sup>3</sup>. Motions to strike are “*disfavored* because they are often used as a delaying tactic.” *Pierce v. Kualoa Ranch Hawaii, Inc.*, No. CV 19-00198 JAO-KJM, 2019 WL 2291452, at \*2 (D. Haw. May 29, 2019) (emphasis added). “The rationale behind granting motions to strike is to *avoid prejudice* to a party by preventing a jury from seeing the offensive matter or giving the allegation any unnecessary notoriety.” *Id.* (citation omitted, emphasis added). “A matter will not be stricken from a pleading unless it is clear that it can have no possible bearing on the subject matter of the litigation.” *Id.* (citation omitted).

As an initial matter, Plaintiff filed this Motion *over one year* after KMS Defendants filed their Answer. Thus, he has failed to comply with HRCF Rule 12(f) which requires filing such a motion “within 20 days after the service of the pleading.” This Motion is untimely and should be denied on that basis alone.

Plaintiff appears to argue that KMS Defendants’ responses that “the medical records speak for themselves” should be deemed admissions of the subject paragraphs in the FAC because he believes such a response is not a denial and that “the medical records they refer to in their Answer do in fact confirm the averment they were used to answer as shown on the specified

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<sup>3</sup> “Inasmuch as the language of Federal Rules of Civil Procedure (FRCP) ... and HRCF Rule ... are substantially similar, interpretations of FRCP ... are persuasive. *Hac v. Univ. of Hawaii*, 102 Hawai’i 92, 101, 73 P.3d 46, 55 (2003) (citing *Gold v. Harrison*, 88 Hawai’i 94, 105, 962 P.2d 353, 364 (1998) (“Where we have patterned a rule of procedure after an equivalent rule within the FRCP, interpretations of the rule by the federal courts are deemed to be **highly persuasive** in the reasoning of this court.” (internal quotation marks and citations omitted) (emphasis added))).

exhibit.” Memo at 14. Plaintiff also argues that KMS Defendants’ responses denying any error or omission are not concise, so they should be deemed admitted. *Id.* at 9. He is mistaken.

KMS Defendants’ answers meet the HRCF Rule 8(b)’s standard and are sufficient, as they allow Plaintiff to determine KMS Defendants’ response to the specific allegations in the FAC and comply with customary pleading practice. HRCF Rule 8(b) provides the standard for admitting or denying allegations in a pleading. HRCF Rule 8(b) requires that a party must state its defenses in “short and plain terms,” and “admit or deny the averments upon which the adverse party relies.” *Id.* HRCF Rule 8(b)(2) merely requires that denials “*fairly meet the substance*” of the allegations they purport to deny. *Id.* The Rule further delineates the manner in which a party may admit or deny allegations: a party may generally deny all allegations; generally deny all those except those specifically admitted; specifically deny designated allegations; or admit in part and deny in part any specific allegation. *Id.* “If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial.” *Id.* This liberal standard fits with HRCF Rule 1’s mandate that the rules be “construed and administered to secure the just, speedy, and inexpensive determination of every action” and the directive in HRCF Rule 8(f) that “[a]ll pleadings shall be so construed as to do substantial justice.”

It is an acceptable and customary practice for a defendant to deny an allegation to the extent it misrepresents a document. It is also customary and proper for a defendant to deny allegations of negligence. A review of the Answer (Ex. B) and the FAC (Ex. A) shows that KMS Defendants’ responses denying specific allegations based on the fact that the relevant document speaks for itself and denying any negligence are interspersed among *detailed responses* to the *compound* allegations made by Plaintiff.

For example, Paragraph 28 of Plaintiff’s FAC states:

28. Dr. Patrick J. O’Donnell cut into Jared James [sic] septal soft-tissue on the day of surgery to diagnose whether it was deviated or not.

Ex. A at ¶ 28. Plaintiff asserts that the Court must strike KMS Defendant’s denial because they use “[medical records speak for themselves] as an answer to averment. Do not deny averment.” Memo at 11. However, in response to Paragraph 28, KMS Defendants’ stated:

24. In response to the allegations contained in Paragraph 28 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or

negligence by Dr. O'Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Specifically, Dr. O'Donnell denies that he cut into Plaintiff's septal soft tissue "[to diagnose] whether it was deviated or not," as alleged. Dr. O'Donnell admits only that during the procedure, the conchal bone was outfractured—i.e., gently pushed away from the septum to create more distance between the septum and turbinate, making more room for airflow—with a Goldmann bar, leaving the mucosa intact.

Ex. B at ¶ 24. Paragraph 53 of the FAC states:

53. Dr. Patrick J. O'Donnell used the same informed consent process that he used on Jared James for surgeries on May 26, 2016 with other surgery patients prior to Jared James [sic] surgical procedures on May 26, 2016.

Ex. A, at ¶ 53. Again, Plaintiff argues that the Court must strike KMS Defendant's denial because they use "[medical records speak for themselves] as an answer to averment. Do not deny averment." Memo at 12. In response to Paragraph 53, KMS Defendants state:

39. In response to the allegations contained in Paragraph 53 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Dr. O'Donnell specifically states that it is his standard practice to visit with each and every patient on the day of their surgery prior to the operation to confirm the surgery to take place, review the consent forms, and present the opportunity for any patient questions or concerns. Dr. Tan and KMS are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

Ex. B, at ¶ 39.

The disputed responses adequately identify which part of the allegations KMS Defendants admit and deny, and the responses comply with HRCP Rule 8's requirements. Under Rule 8(b), "[w]hen a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder." The particular language or form of the specific denial is not important as long as it is clear which allegations are being negated and which are not. Notably, Plaintiff cites *no authority* to support his position; a mere assertion that the denials "do not deny averment" — *particularly when they clearly do* — and should therefore be deemed admitted, without more, is insufficient to satisfy his burden on this Motion.

In addition, courts routinely permit a defendant to respond with "the document speaks for itself," particularly where, as here, in the same paragraph, a defendant has also admitted or denied the allegations. *See e.g.*, 5 Wright and Miller, Federal Practice and Procedure 3d § 1264

(use of the phrase “documents speaks for itself” may be made clear in the context of the response). For example, in paragraph 53 of the FAC, Plaintiff alleges that Dr. O’Donnell used the same informed consent process with Plaintiff as with other patients. In their Answer, KMS Defendants admitted only that the medical records speak for themselves, denied the allegations to the extent they misstated the medical records, and further stated that Dr. O’Donnell’s standard practice is to visit with each and every patient on the day of their surgery prior to the operation to confirm the surgery to take place, review the consent forms, and present the opportunity for any patient questions or concerns. Ex. B at ¶ 39. This is precisely the type of response that courts deem permissible and have refused to strike from a defendant’s answer. *See e.g., Sykes v. Cigna Life Ins. Co.*, No. C 10-01126 CRB, 2010 WL 3324261, at \*3 (N.D. Cal. Aug. 23, 2010) (finding that defendant did more than merely include response that “the document speaks for itself”; defendant also made admissions and conditional and general denials and therefore motion to strike was denied); *Barnes v. AT&T Pension Benefit Plan-Nonbargained Program*, No. C 08-04058, 2010 WL 2507769, at \*7 (N.D. Cal. June 22, 2010) (defendant satisfied burden under Rule 8 by denying all matters which it has not admitted or are not contained in the document and by stating that the document speaks for itself); *Eternal Investments, L.L.C. v. The City of Lee’s Summit, Missouri*, No. 05-0521-CV-W-FJG, 2006 WL 573919, at \*1 (W.D. Mo. March 8, 2006) (denying motion to strike and finding that defendant’s denial of allegations because they call for legal conclusions and defendant’s responses that documents speak for themselves were terms of art that did not prevent plaintiff from understanding or comprehending defendant’s answer).

KMS Defendants’ answers do not run afoul to HRCF Rule 8 in a manner which results in prejudice against Plaintiff. KMS Defendants have denied Plaintiff’s allegations to the extent they conflict with the underlying documents (Plaintiff’s medical records related to this medical negligence action). Plaintiff already has those documents in his possession, and can both compare the allegations in the FAC with the actual substance of the documents, and prove their contents in litigation or trial. In fact, Plaintiff appears to paraphrase or quote from portions of the medical record in his FAC (*see, e.g.,* Ex. A, FAC at ¶¶ 41, 42, 49, 50, 83, 86, 89, 90, and 95).

In addition, HRCF Rule 8 also does not require KMS Defendants to obtain the documents at issue and quote exactly which parts it admits or denies. Such an interpretation would run against Rule 8(b)’s mandate that the answer be short and plain.

Plaintiff also argues that KMS Defendants’ response denying the allegations based on a denial of “error, omission, or negligence,” is improper because it is not concise. However, this

type of denial is exactly the type of “concise” denial the rules contemplate, without providing the details of KMS Defendants’ defense theories and lengthy quotations from the medical records.

The arguments raised by Plaintiff in this portion of his Motion lack merit. KMS Defendants have complied with customary pleading practice and Plaintiff has not pointed to any interpreting case law showing that KMS Defendants have run afoul of the rules regarding a sufficient response to a complaint. KMS Defendants’ responses are reasonable, short, and plain, and comport with Rule 8’s requirements. Accordingly, Plaintiff’s Motion must be denied.

**D. Plaintiff’s Motion for Summary Judgment Should be Denied.**

Plaintiff has the burden of proving his claims. Plaintiff attempts to shift the burden to KMS Defendants by arguing that KMS Defendants’ denials are insufficient and that the Court should accept his allegations as undisputed facts. Again, he is mistaken.

HRCP Rule 12(c) states:

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. ***If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.***

Emphasis added. Because Plaintiff refers to his medical records (Exhibits “A-AAA”-“A#96” to the Motion) and makes substantive arguments in his Motion, his Motion is converted to a motion for summary judgment under HRCP Rule 56.

A party is entitled to summary judgment *only* “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact” on the issue for which summary judgment is sought “and that the moving party is entitled to a judgment as a matter of law.” HRCP Rule 56(c).

The moving party may discharge its burden by demonstrating that, if the case went to trial, there would be no competent evidence to support a judgment for its opponent. *See Exotics I-Kona, Inc. v. E.I. Du Pont De Nemours & Co.*, 116 Iawai`i 277, 301, 172 P.3d 1021, 1045 (2007) (“a party moving for summary judgment need not . . . negate his or her opponent’s claims, but need only point out that there is an absence of evidence to support the opponent’s claims”).

Although Plaintiff labels his claims as ones for “fraud,” “battery,” “assault,” “conspiracy,” and “product liability,” they are actually medical malpractice claims. In medical malpractice cases, the plaintiff has the burden of establishing a duty owed by the defendants to the plaintiff, a breach of that duty, and a causal relationship between the breach and the injury suffered. *Bernard v. Char*, 79 Hawai‘i 371, 377, 903 P.2d 676, 682 (Ct. App. 1993), *aff’d*, 79 Hawaii 362, 903 P.2d 667 (Haw. 1995). To meet this burden, Hawai‘i law requires that the plaintiff produce **medical expert testimony** to prove that (1) the defendant medical provider failed to follow the applicable standard of care, and (2) the breach was the actual and proximate cause of injury to the plaintiff. *See Craft v. Peebles*, 78 Hawai‘i 287, 297–98, 893 P.2d 138, 148–49 (1995); *Barbee v. The Queen’s Medical Center*, 119 Hawai‘i 136, 194 P.3d 1098 (Haw. Ct. App. 2008); and *Bernard*, 79 Hawai‘i at 377, 903 P.2d at 682. “[T]he standard of care for a claim based on allegedly negligent medical treatment must be established by reference to prevailing standards of conduct in the applicable medical community.” *Carr v. Strode*, 79 Hawai‘i 475, 485 n.6, 904 P.2d 489, 499 n.6 (1995).

Plaintiff does not present any legal support for his Motion. Plaintiff has cited the incorrect rule, failed to provide the correct legal standard, and failed to provide a single piece of admissible evidence in support of his Motion. Instead, Plaintiff relies on Exhibits “A-AAA”-“A#96” to his Motion, which are unauthenticated and inadmissible. *Takaki v. Allied Mach. Corp.*, 87 Hawai‘i 57, 69, 951 P.2d 507, 519 (App.1998) (“a motion for summary judgment may be decided only on the basis of admissible evidence”); *see also Lales v. Wholesale Motors Co.*, 133 Hawai‘i 332, 361–62, 328 P.3d 341, 370–71 (2014) (discussing how evidence must be admissible in order to be relied upon in a HRCP Rule 56 motion for summary judgment).

Plaintiff’s Declaration to the Motion at ¶¶ 1-2 states: “I received the medical records in Plaintiffs Exhibits ‘A-AAA’-‘A#96’ from Kapiolani Medical Center for Women and Children (KMCWC) after requesting my medical records from them. [] They are **true and correct copies of what I received from them, with sections highlighted and the context explained in pen on the medical records and on sticky notes** . . . Also contained in Exhibits...are relative probative evidence used to clarify and prove averments and causes of action....” (emphasis added). Examples of his exhibits include:

- Ex A-AAA - Nasal Concha (Conchae) are also called "Nasal Turbinate" (Wikipedia)
- Ex A-000 - Referred exclusively for "Vestibular Stenosis"/"Nasal Valve Collapse" (MR p.1-8)
- Ex A-000.1 - Early Anesthesia by Teaching Hospitals for Unconsented Pelvic Exams
- Ex A-001 - FRAUDULENT INFORMED CONSENT DOCUMENT Standard Practice (MR p.1-3)
- Ex A-001.1 - CRIME OF VIOLENCE: Definition
- Ex A-002 - Surgical Report (MR p.1-2)
- Ex A-003 - HYPOTHERMIA - Entire surgical procedures (MR p.1-5)

See Motion at Exhibits: Table of Contents. The medical records provided by Plaintiff are not true and correct copies, as they have been altered by Plaintiff. Plaintiff mischaracterizes the medical records and exhibits in his Motion, and instead, inserts his own interpretation of what the medical records state in his argument, and on his post-it notes attached to his exhibits. For example, Ex. A-000.1 to his Motion states:

**Educational pelvic exams on anesthetized women: Why consent matters**

Phoebe Friesen

*Teaching Hospitals (Like Kapiolani) try to defend anesthetizing people early without consent, for unconsented procedures.*

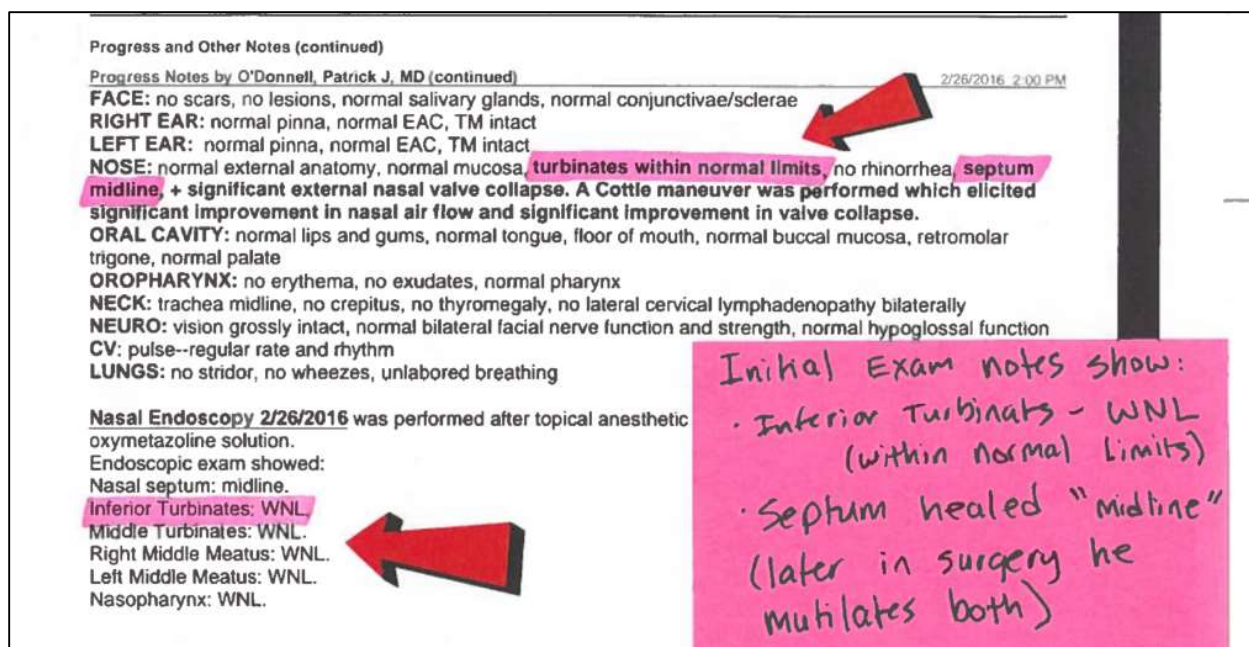
*Kapiolani Anesthetizes people hours early (children's hospital)*

**Abstract**

It is argued here that the practice of medical students performing pelvic exams on women who are under anesthetic and have not consented is immoral and indefensible. This argument begins by laying out the ethical justification for the practice of informed consent, which can be found in autonomy and basic rights. Foregoing the process of consent within medicine can result in violations of both autonomy and basic rights, as well as trust, forming the basis of the wrong of unauthorized pelvic examinations. Several objections to this argument are considered, all of which stem from the idea that this practice constitutes an exception to the general requirement of informed consent. These objections suggest that nonconsensual pelvic examinations on women under anesthetic are ethically acceptable on utilitarian grounds, in that they offer benefits either to the patient or to society, or on the grounds of triviality, in that consent is already presumed, or the practice is insignificant. Each of these objections is rejected and the practice is deemed indefensible.

**KEYWORDS**  
autonomy, informed consent, medical education, trust

Exhibit A-004 to his Motion states:



Plaintiff's exhibits are irrelevant, unauthenticated, inadmissible, and do not establish any undisputed facts. Even if Plaintiff's exhibits were admissible, Plaintiff is not a qualified medical expert, and the basis of Plaintiff's argument, which is his interpretation of the medical records, is wrong. In addition, summary judgment should not be granted when there is still time for the non-moving party to develop evidence for use at trial, unless there is a basis for concluding that such an effort would be futile. *See Ralston v. Yim*, 129 Hawai'i 46, 63, 292 P.3d 1276, 1293 (2013). Accordingly, Plaintiff's Motion for Summary Judgment must be denied. However, if the Court is inclined to grant the Motion, KMS Defendants request a continuance under HRCP Rule 56(f) to conduct further discovery. *See id.* ("HRCP Rule 56(f) is the appropriate means by which parties can ensure that they have adequate time to respond to a motion for summary judgment."). However, KMS Defendants maintain that *none* of the evidence submitted by Plaintiff support his Motion, as stated above.

**E. Plaintiff's Argument that the Court Should Sanction KMS Defendants' Counsel for KMS Defendants' Answer to paragraphs 28, 77, and 78 of the FAC is Procedurally Improper and Without Merit.**

HRCP Rule 11 regarding sanctions states in relevant part:

A motion for sanctions under this Rule ***shall be made separately*** from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b) of this Rule. ***It shall be served as provided in Rule 5*** of these Rules, but ***shall not be filed with or presented to the court unless***, within 21 days after service of the motion (or such other

period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Emphasis added. Plaintiff's motion for sanctions is procedurally improper because he combined the request with other motions, he failed to serve it on KMS Defendants, and instead, improperly filed it with this Court. Again, Plaintiff mischaracterizes the medical records, and instead, inserts his own interpretation of what the medical records state in his argument that KMS Defendants' denials are somehow "deceptive." Plaintiff is not a qualified medical expert, and the Exhibit A-AAA to which he refers is inadmissible and does not establish any undisputed facts. KMS Defendants' responses to paragraphs 28, 77, and 78 of the FAC are appropriate and Plaintiff's argument that counsel should be sanctioned lacks merit.

#### **IV. CONCLUSION**

For the foregoing reasons, KMS Defendants respectfully request that Plaintiff's Motion be denied.

DATED: Honolulu, Hawai'i, August 20, 2024.

/s/ John-Anderson L. Meyer

JOHN-ANDERSON L. MEYER

JANNA WEHILANI AHU

Attorneys for Defendants

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**FILED UNDER SEAL**  
**Pursuant to HCRR Rule 9**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN  
TAN, M.D.; SELENA PETERS, M.D.;  
MERLA TAKENAKA RN; KAPIOLANI  
MEDICAL SPECIALISTS; KAPIOLANI  
MEDICAL CENTER FOR WOMAN AND  
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (JHA)

**INFORMATION DESIGNATED  
CONFIDENTIAL PURSUANT TO RULE  
9 OF THE HAWAII COURT RECORDS  
RULES**

RE: PORTIONS OF DEFENDANTS  
PATRICK J. O'DONNELL, M.D.; SUSAN  
TAN, M.D.; AND KAPI'OLANI MEDICAL  
SPECIALISTS' ANSWER TO AMENDED  
COMPLAINT, FILED MAY 26, 2023 [DKT.  
65]

Judge: James H. Ashford

**\*\*\* CONFIDENTIAL INFORMATION \*\*\***

**INFORMATION DESIGNATED CONFIDENTIAL PURSUANT  
TO RULE 9 OF THE HAWAII COURT RECORDS RULES**

LIST ALL CONFIDENTIAL INFORMATION:

| PORTIONS OF DEFENDANTS PATRICK J. O'DONNELL, M.D.; SUSAN TAN, M.D.;<br>AND KAPI'OLANI MEDICAL SPECIALISTS' ANSWER TO AMENDED COMPLAINT,<br>FILED MAY 26, 2023 [DKT. 65] |                                   |                                                         |                                                |                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------|
| Document<br>File Date                                                                                                                                                   | Reference in<br>Document          | Type of<br>Information                                  | Complete Information                           | Authority for<br>Confidentiality                                       |
| 6/20/23                                                                                                                                                                 | Answer to<br>Amended<br>Complaint | Health and<br>medical<br>information of<br>Jared James. | Portions of the Answer<br>to Amended Complaint | Hawai'i Court<br>Records Rules<br>("HCRR")<br>2.19 and 9, and<br>HIPAA |

DATED: Honolulu, Hawai'i, June 20, 2023.

/s/ John-Anderson L. Meyer

JOHN-ANDERSON L. MEYER

JANNA WEHILANI AHU

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SPECIALISTS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JARED JAMES,

Plaintiff,

vs.

PATRICK J. O'DONNELL, M.D.; SUSAN  
TAN, M.D.; SELENA PETERS, M.D.;  
MERLA TAKENAKA RN; KAPIOLANI  
MEDICAL SPECIALISTS; KAPIOLANI  
MEDICAL CENTER FOR WOMAN AND  
CHILDREN; HAWAII PACIFIC HEALTH,

Defendants.

Civil No. 1CCV-21-0000683 (JHA)

**DEFENDANTS PATRICK J.  
O'DONNELL, M.D.; SUSAN TAN, M.D.;  
AND KAPI'OLANI MEDICAL  
SPECIALISTS' ANSWER TO AMENDED  
COMPLAINT, FILED MAY 26, 2023  
[DKT. 65]; CERTIFICATE OF SERVICE**

Judge: James H. Ashford

**DEFENDANTS PATRICK J. O'DONNELL, M.D.;  
SUSAN TAN, M.D.; AND KAPI'OLANI MEDICAL SPECIALISTS'  
ANSWER TO AMENDED COMPLAINT, FILED MAY 26, 2023 [DKT. 65]**

COME NOW Defendants PATRICK J. O'DONNELL, M.D.; SUSAN TAN, M.D.; and  
KAPI'OLANI MEDICAL SPECIALISTS ("KMS," and collectively "Defendants"), by and  
through their counsel, Dentons US LLP, in answer to the Amended Complaint, filed May 26,  
2023 ("Amended Complaint") by Plaintiff JARED JAMES ("Plaintiff"), and allege and aver as  
follows:

### **FIRST DEFENSE**

1. The Amended Complaint fails to state a claim against the Defendants upon which relief can be granted.

### **SECOND DEFENSE**

2. In response to the allegations contained in Paragraphs 6, 17, 56, 63, 64, 65, 67, 68, 69, 70, 76, 84, 93, and 94 of the Amended Complaint, Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity, and therefore, neither admit nor deny them.

3. Defendants admit to the allegations contained in Paragraphs 3 and 47 of the Amended Complaint.

4. In response to the allegations contained in Paragraph 1 of the Amended Complaint, to the extent said allegations call for legal conclusions and judicial determinations, they do not require a response from Defendants. To the extent a response is required, Defendants admit that it appears that this court has jurisdiction over this matter.

5. In response to the allegations contained in Paragraph 2 of the Amended Complaint, to the extent said allegations call for legal conclusions and judicial determinations, they do not require a response from Defendants. To the extent a response is required, Defendants admit only that Dr. Patrick O'Donnell and Dr. Susan Tan were, at the time of the causes of action, residents of the State of Hawai`i, and that KMS was an entity registered with the Hawaii Department of Commerce and Consumer Affairs in the State of Hawai`i. Defendants are without information as to the remaining allegations contained in Paragraph 2 of the Amended Complaint and leave Plaintiff to his proof.

6. In response to the allegations contained in Paragraph 4 of the Amended Complaint, Defendants deny any wrongdoing on behalf of Dr. O'Donnell, Dr. Tan, and KMS. Defendants are without information as to the remaining allegations contained in Paragraph 4 of the Amended Complaint and leave Plaintiff to his proof.

7. In response to the allegations contained in Paragraph 5 of the Amended Complaint, Defendants admit only that the medical records speak for themselves and deny the allegations to the extent they misstate the medical records.

8. In response to the allegations contained in Paragraph 7 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Specifically, Defendants deny that Dr. O'Donnell performed unnecessary surgery on Plaintiff without his consent and deny that Defendants lied and/or committed fraud in medical documents and in personal communications with Plaintiff. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

9. In response to the allegations contained in Paragraph 8 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

10. In response to the allegations contained in Paragraph 9 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Specifically, Defendants admit that Plaintiff consulted with Dr. O'Donnell for potential surgery for his nasal

valve collapse; that Dr. O'Donnell and Plaintiff discussed harvesting cartilage from Plaintiff's ear only if there was insufficient cartilage in his septum for harvesting; and that if harvest from the ear was necessary, that Dr. Susan Tan would be involved in that portion of the procedure. Defendants deny the allegations to the extent they allege any error, omission, negligence or failure to obtain informed consent by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof.

11. In response to the allegations contained in Paragraph 10 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Specifically, Defendants deny that they performed unnecessary surgery on Plaintiff. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

12. In response to the allegations contained in Paragraph 11 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

13. In response to the allegations contained in Paragraph 12 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and to the extent they misstate the medical records. Specifically, Defendants deny that Plaintiff was hypothermic when surgery started or that the anesthesia caused hypothermia. Defendants

are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

14. In response to the allegations contained in Paragraph 13 of the Amended Complaint, Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

15. In response to the allegations contained in Paragraph 14 of the Amended Complaint, Defendants deny that “surgery is considered an act of violence.” Defendants deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by Defendants, and leave Plaintiff to his proof. Specifically, Defendants deny that they performed surgery on Plaintiff without his consent. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

16. In response to the allegations contained in Paragraph 15 of the Amended Complaint, Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

17. In response to the allegations contained in Paragraph 16 of the Amended Complaint, to the extent said allegations call for legal conclusions and judicial determinations, they do not require a response from Defendants. To the extent a response is required, Defendants admit only that Plaintiff filed two related inquiries with the Medical Inquiry and Conciliation Panel (“MICP”) on July 5, 2017; the cases were consolidated; and on or about March 21, 2018, a letter from MICP was issued terminating the proceedings. Defendants deny the remaining allegations in said paragraphs, and leave Plaintiff to his proof.

18. In response to the allegations contained in Paragraph 18 of the Amended Complaint, Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and leave Plaintiff to his proof. Dr. O'Donnell specifically states that it is his standard practice to visit with each and every patient on the day of their surgery prior to the operation to confirm the surgery to take place, review the consent forms, and present the opportunity for any patient questions or concerns; he is certain this occurred on the day of Plaintiff's surgery before his operation. Dr. O'Donnell specifically recalls signing and completing the operative consent form on the morning of Plaintiff's surgery; and also recalls reviewing with Plaintiff the expectations from the surgery, the risks and potential complications, and the possibility of septal cartilage harvest the day of surgery. For unclear reasons that are not within Dr. O'Donnell's control, the KMCWC records do not contain the surgical consent form with Plaintiff's signature. However, the records do demonstrate elsewhere that Plaintiff signed the Surgical Consent Form on the day of the surgery.

19. In response to the allegations contained in Paragraph 19 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Dr. O'Donnell specifically states that it is his standard practice to visit with each and every patient on the day of their surgery prior to the operation to confirm the surgery to take place, review the consent forms, and present the opportunity for any patient questions or concerns; he is certain this occurred on the day of Plaintiff's surgery before his operation. Dr. O'Donnell specifically recalls signing and completing the operative consent form on the morning of Plaintiff's surgery; and also recalls reviewing with Plaintiff the expectations from the surgery, the risks and potential complications, and the possibility of septal cartilage harvest the

day of surgery. For unclear reasons that are not within Dr. O'Donnell's control, the KMCWC records do not contain the surgical consent form with Plaintiff's signature. However, the records do demonstrate elsewhere that Plaintiff signed the Surgical Consent Form on the day of the surgery.

20. In response to the allegations contained in Paragraphs 20, 21, 22, and 23 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

21. Defendants admit the allegations in Paragraphs 24 and 25 of the Amended Complaint.

22. In response to the allegations contained in Paragraph 26 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

23. In response to allegations contained in Paragraph 27 of the Amended Complaint Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

24. In response to the allegations contained in Paragraph 28 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Specifically, Dr. O'Donnell denies that he cut into Plaintiff's septal soft tissue "whether it

was deviated or not,” as alleged. Dr. O’Donnell admits only that during the procedure, the conchal bone was outfractured—*i.e.*, gently pushed away from the septum to create more distance between the septum and turbinate, making more room for airflow—with a Goldmann bar, leaving the mucosa intact.

25. In response to the allegations contained in Paragraph 29 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Dr. O’Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof.

26. In response to the allegations contained in Paragraph 30 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Dr. O’Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof.

27. In response to the allegations contained in Paragraphs 31, 32, 33, and 34 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, deny that Plaintiff had hypothermia, and leave Plaintiff to his proof.

28. In response to the allegations contained in Paragraph 35 of the Amended Complaint, Defendants admit that a video recording device was present at Plaintiff’s surgical procedure, in the event that Dr. O’Donnell needed to use it.

29. In response to the allegations contained in Paragraph 36 of the Amended Complaint, Defendants admit that a video recording device called a “Stryker” was present at Plaintiff’s surgical procedure, in the event that Dr. O’Donnell needed to use it.

30. In response to the allegations contained in Paragraph 37 of the Amended Complaint, Defendants deny that Plaintiff’s surgical procedure was recorded on the Stryker video recorder, and leave Plaintiff to his proof.

31. In response to the allegations contained in Paragraph 38 of the Amended Complaint, to the extent said allegations call for a medical opinion, they do not require a response from Defendants. To the extent a response is required, Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

32. In response to the allegations contained in Paragraph 39 of the Amended Complaint, Dr. O’Donnell admits that in some cases, but not all, it may be possible to diagnose a deviated septum without surgical examination. He admits that Plaintiff consulted with Dr. O’Donnell for potential surgery for his nasal valve collapse. Dr. Tan and KMS are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

33. In response to the allegations contained in Paragraph 40 of the Amended Complaint, Dr. O’Donnell admits that in some cases, but not all, it may be possible to diagnose a deviated septum simply by looking at a patient’s nose. He admits that Plaintiff consulted with Dr. O’Donnell for potential surgery for his nasal valve collapse. Dr. Tan and KMS are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

34. In response to the allegations contained in Paragraphs 41, 42, and 44 of the Amended Complaint, Defendants admit only that the medical records speak for themselves.

Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

35. In response to the allegations contained in Paragraph 43 of the Amended Complaint, Defendants deny that University of Hawai`i medical students were present at Plaintiff's surgery on May 26, 2016.

36. In response to the allegations contained in Paragraph 45 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny that any other surgeon other than Dr. O'Donnell performed surgery on Plaintiff and deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

37. Defendants deny the allegations contained in Paragraph 46 of the Amended Complaint.

38. In response to the allegations contained in Paragraphs 48, 49, 50, 51, and 52 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

39. In response to the allegations contained in Paragraph 53 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Dr. O'Donnell specifically states that it is his standard practice to visit with each and every patient on the day of their surgery prior to the operation to confirm the surgery to take place, review the consent forms, and present the opportunity for any patient questions or concerns. Dr. Tan and KMS are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

40. In response to the allegations contained in Paragraph 54 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

41. In response to the allegations contained in Paragraphs 55, 57, 58, 59, and 60 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

42. In response to the allegations contained in Paragraph 61 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

43. In response to the allegations contained in Paragraphs 62 and 66 of the Amended Complaint, to the extent said allegations call for legal conclusions and judicial determinations, they do not require a response from Defendants. To the extent a response is required, Dr. O'Donnell and KMS admit only that Dr. O'Donnell had clinical privileges at KMCWC on May 26, 2016. Dr. Tan is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

44. In response to the allegations contained in Paragraph 71 of the Amended Complaint, KMS admits only that Martha Smith was on the Board of Directors and Chair of

KMS on May 26, 2016. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

45. In response to the allegations contained in Paragraph 72 of the Amended Complaint, KMS admit only that Raymond P. Vara, Jr. was on the Board of Directors of KMS on May 26, 2016. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

46. In response to the allegations contained in Paragraph 73 of the Amended Complaint, KMS denies that it performs surgery and denies the allegations to the extent they allege any error, omission, or negligence by KMS. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

47. In response to the allegations contained in Paragraphs 74 and 75 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof.

48. In response to the allegations contained in Paragraph 77 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he "broke [Plaintiff's] right inferior turbinate bone." Dr. O'Donnell admits only that during the procedure, the conchal bone was outfractured—*i.e.*, gently pushed away from the septum to create more distance between the septum and turbinate, making more room for airflow—with a Goldmann bar, leaving the mucosa intact.

49. In response to the allegations contained in Paragraph 78 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he "broke [Plaintiff's] left inferior turbinate bone." Dr. O'Donnell admits only that during the procedure, the conchal bone was outfractured—*i.e.*, gently pushed away from the septum to create more distance between the septum and turbinate, making more room for airflow—with a Goldman bar, leaving the mucosa intact.

50. In response to the allegations contained in Paragraph 79 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell admits only that during the procedure, the conchal bone was outfractured—*i.e.*, gently pushed away from the septum to create more distance between the septum and turbinate, making more room for airflow—with a Goldman bar, leaving the mucosa intact; and he met with Plaintiff in a post-procedure office visit and drew on a diagram, explaining aspects of the procedure.

51. In response to the allegations contained in Paragraph 80 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell admits only that during the procedure, the conchal bone was outfractured—*i.e.*, gently pushed away from the septum to create more distance between the septum and turbinate, making more

room for airflow—with a Goldmann bar, leaving the mucosa intact; and he met with Plaintiff in a post-procedure office visit and drew on a diagram, explaining aspects of the procedure.

52. In response to the allegations contained in Paragraph 81 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he “cut out [Plaintiff's] adenoid.”

53. In response to the allegations contained in Paragraph 82 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell admits that he “never told [Plaintiff] that he, or someone else, cut out his adenoid.”

54. In response to the allegations contained in Paragraph 83 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

55. In response to the allegations contained in Paragraph 85 of the Amended Complaint, to the extent said allegations call for legal conclusions and judicial determinations, they do not require a response from Defendants. To the extent a response is required, Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

56. In response to the allegations contained in Paragraphs 86, 87, 89, 90, and 95 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof.

57. In response to the allegations contained in Paragraph 88 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he "cut out the cartilage in the front of [Plaintiff's] nose." Dr. O'Donnell admits only that during the procedure, he removed the center portion of the septal cartilage, where the left deviation was most pronounced, to be used as the battens. The small portion of the septal cartilage removed was located greater than 1 cm back from the front of the septum, and greater than 1 cm down from the top of the septum. Dr. O'Donnell explained this to Plaintiff in one of the post-operation visits, during which he drew on a diagram the area from which the septal cartilage had been taken.

58. In response to the allegations contained in Paragraph 91 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he "seemed surprised when [Plaintiff] told him the septal cartilage was completely intact" and denies that he replied "well, I didn't know that."

59. In response to the allegations contained in Paragraph 92 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records. Specifically, Dr. O'Donnell denies that he "cut out [Plaintiff's] septum." Dr. O'Donnell admits only that he removed the center portion of the septal cartilage, where the left deviation was most pronounced, to be used as the batten. The small portion of the septal cartilage removed was located greater than 1 cm back from the front of the septum, and greater than 1 cm down from the top of the septum; and he met with Plaintiff in a post-procedure office visit and drew on a diagram, explaining aspects of the procedure.

60. In response to the allegations contained in Paragraph 96 of the Amended Complaint, Defendants admit only that the medical records speak for themselves and deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

### **Causes of Action**

61. With respect to Paragraph 97 of the Amended Complaint, Defendants repeat, reallege, and incorporate their specific answers to Paragraphs 1 through 96 as though set forth verbatim, and the same are adopted by reference.

62. In response to the allegations contained in Paragraph 98 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. KMS and Dr. O'Donnell deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by KMS and Dr. O'Donnell, and to the extent they misstate

the medical records, and leave Plaintiff to his proof. KMS and Dr. O'Donnell specifically deny that the "informed consent process" "never took place." Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

63. In response to the allegations contained in Paragraph 99 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. KMS and Dr. O'Donnell deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by KMS and Dr. O'Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof. KMS and Dr. O'Donnell specifically deny that there was "fraud in the informed consent" and deny that the surgeries were performed without informed consent. Dr. O'Donnell denies that there was "breaking the left inferior turbinate bone" and "breaking the right inferior turbinate bone." Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

64. In response to the allegations contained in Paragraph 100 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

65. In response to the allegations contained in Paragraph 101, Part 1 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. KMS and Dr. O'Donnell deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by KMS and Dr. O'Donnell, and to the extent they misstate the medical records, and leave Plaintiff to his proof. KMS and Dr. O'Donnell deny that there

was “breaking the left interior turbinate bone” and “breaking the right inferior turbinate bone.” Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

66. In response to the allegations contained in Paragraph 101, Part 2 of the Amended Complaint, Defendants deny the allegations as to Defendants. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

67. In response to the allegations contained in Paragraph 101, Part 3 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof. Defendants deny that Dr. O’Donnell altered the surgery. Defendants admit that Plaintiff consulted with Dr. O’Donnell for potential surgery for his nasal valve collapse; that Dr. O’Donnell and Plaintiff discussed harvesting cartilage from Plaintiff’s ear only if there was insufficient cartilage in his septum for harvesting; and that if harvest from the ear was necessary, that Dr. Susan Tan would be involved in that portion of the procedure. Defendants deny that they performed surgery on Plaintiff without his consent. Defendants deny that Dr. O’Donnell “fraudulently signed as witness to an informed consent process that never happened.” Defendants deny that Dr. O’Donnell “completely skipped” the informed consent process. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

68. In response to the allegations contained in Paragraph 101, Part 4 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Defendants

deny the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by Defendants, and to the extent they misstate the medical records, and leave Plaintiff to his proof. KMS and Dr. O'Donnell deny that there was "breaking the left inferior turbinate bone" and "breaking the right inferior turbinate bone." Defendants deny that there was "no informed consent for surgeries," "fraudulent informed consent for surgeries," and "improper consent for surgeries." Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

69. In response to the allegations contained in Paragraph 101, Part 5 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, negligence, or failure to obtain informed consent by Dr. O'Donnell, and to the extent they misstate the medical records, and leaves Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

70. In response to the allegations contained in Paragraph 101, Part 6 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records, and leaves Plaintiff to his proof. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

71. In response to the allegations contained in Paragraph 102 of the Amended Complaint, Defendants admit only that the medical records speak for themselves. Dr. O'Donnell denies the allegations to the extent they allege any error, omission, or negligence by Dr. O'Donnell, and to the extent they misstate the medical records, and leaves Plaintiff to his

proof. KMS and Dr. O'Donnell deny that there was "breaking the left interior turbinate bone" and "breaking the right inferior turbinate bone." Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

72. In response to the allegations contained in Paragraphs 103, 104, and 105 of the Amended Complaint, Defendants deny the allegations as to Defendants. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations.

73. In response to the allegations in contained in the "Damages" section in the Amended Complaint, Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and therefore deny the same and leave Plaintiff to his proof.

74. In response to the allegations in contained in the "Prayer for Relief" section in the Amended Complaint, Defendants deny the allegations to the extent they allege any error, omission, or negligence by Defendants. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and therefore deny the same and leave Plaintiff to his proof.

### **THIRD DEFENSE**

75. Any allegation contained in the Amended Complaint not specifically addressed in this Answer is hereby denied.

### **FOURTH DEFENSE**

76. Plaintiff's claims are limited or barred to the extent of Plaintiff's failure to mitigate damages.

#### **FIFTH DEFENSE**

77. The liability, if any, for the damages alleged in the Amended Complaint rests with parties other than Defendants.

#### **SEVENTH DEFENSE**

78. Plaintiff is barred from maintaining this action against Defendants by reason of Plaintiff's own negligence or other wrongful conduct which was the legal cause of the damages alleged in the Amended Complaint.

#### **EIGHTH DEFENSE**

79. Plaintiff's claims are limited or barred to the extent of the absence of damage to Plaintiff.

#### **NINTH DEFENSE**

80. Some or all of Plaintiff's claims are barred because Defendants acted in good faith.

#### **TENTH DEFENSE**

81. Plaintiff's claims against Defendants are barred by intervening and/or superseding causes of any injuries to Plaintiff as alleged in the Complaint.

#### **ELEVENTH DEFENSE**

82. Plaintiff's claims are untimely and barred by the applicable statute of limitations or laches.

#### **TWELFTH DEFENSE**

83. The Complaint is barred by the voluntary assumption of a known risk.

### **THIRTEENTH DEFENSE**

84. The Complaint is barred, in whole or in part, because the injuries or damages complained of were caused by events which Defendants could not reasonably foresee and over which they had no control.

### **FOURTEENTH DEFENSE**

85. Plaintiff, at all relevant times herein, gave his consent, express or implied, to the alleged acts, omissions, and/or conduct of Defendants.

### **FIFTEENTH DEFENSE**

86. Based on the allegations in the Amended Complaint, Defendants cannot formulate all of their defenses at this time, but reserve the right to amend their Answer to include additional affirmative defenses if and when discovery justifies the same.

### **SIXTEENTH DEFENSE**

87. Defendants gives notice that they reserve the right to assert other defenses and other matters constituting an avoidance or affirmative defense as set forth in Rule 8 of the Hawai`i Rules of Civil Procedure and will seek to amend their Answer to allege such defenses of which they become aware during the course of further investigation, discovery, or trial in this matter.

WHEREFORE, Defendants pray that:

- A. All claims contained in Plaintiff's Amended Complaint against Defendants be dismissed with prejudice;
- B. Defendants be awarded attorneys' fees and costs as appropriate; and
- C. Defendants have such other further relief as this Court deems just and equitable.

DATED: Honolulu, Hawai'i, June 20, 2023.

/s/ John-Anderson L. Meyer

JOHN-ANDERSON L. MEYER

JANNA WEHILANI AHU

Attorneys for Defendants

PATRICK J. O'DONNELL, M.D.; SUSAN TAN,  
M.D.; and KAPIOLANI MEDICAL SPECIALISTS

# NOTICE OF ELECTRONIC FILING

**Electronically Filed**  
**FIRST CIRCUIT**  
**1CCV-21-0000683**  
**20-JUN-2023**  
**04:08 PM**  
**Dkt. 85 NEF**

An electronic filing was submitted in Case Number 1CCV-21-0000683. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

**Case ID:** 1CCV-21-0000683

**Title:** JARED JAMES, Plaintiff vs. DR PATRICK J O'DONNELL MD DR SUSAN TAN MD DR SELENA PETERS MD MERIA TAKENAKA RN KAPIOLANI MEDICAL SPECIALISTS KAPIOLANI MEDICAL CENTER FOR WOMAN and CHILDREN HAWAII PACIFIC HEALTH, Defendants

**Filing Date / Time:** TUESDAY, JUNE 20, 2023 04:08:32 PM

**Filing Parties:** John-Anderson Meyer  
Janna Ahu

**Case Type:** Circuit Court Civil

**Lead Document(s):**

**Supporting Document(s):** 82-ANSWER TO COMPLAINT

83-Info Confidential Ntc - HCCR9

84-Info Confidential Doc - HCCR9

**Document Name:** 82-Defendants Patrick J. O'Donnell, M.D.; Susan Tan, M.D.; and Kapiolani Medical Specialists' Answer to Amended Complaint, Filed May 26, 2023 [Dkt. 65]; Certificate of Service

83-Information Designated Confidential Pursuant to Rule 9 of The Hawaii Court Records Rules

84-[Sealed] Information Designated Confidential Pursuant to Rule 9 of The Hawaii Court Records Rules

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

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This notification is being electronically mailed to:

Recorded Proceeding 1st Circuit ( *CTAVAppeals.1cc@courts.hawaii.gov* )

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The following parties need to be conventionally served:

ALL PARTIES-RE DOCKET ONLY-NOT PARTY RE SERVICE REQUIREMENT

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