

Electronically Filed
FIRST CIRCUIT
1CCV-21-0000683
31-MAR-2026
02:17 PM
Dkt. 387 MES

**MEMORANDUM
IN SUPPORT OF MOTION**

TO

**DEFENDANTS
PATRICK J. O'DONNELL, M.D.; SUSAN
TAN, M.D.; AND KAPI'OLANI MEDICAL
SPECIALISTS' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

**FILED
UNDER
SEAL**

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)

**MEMORANDUM IN
SUPPORT OF MOTION**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RELEVANT FACTUAL AND PROCEDURAL BACKGROUND	1
A.	Plaintiff's Claims	1
B.	Discovery	3
III.	LEGAL STANDARD.....	4
A.	Summary Judgment Standard.	4
B.	HRS § 657-7.3	4
C.	HRS § 671-18	4
D.	Informed Consent.....	5
IV.	ARGUMENT.....	5
A.	Hawai'i Revised Statutes § 657-7.3 Is The Applicable Statute Of Limitations	5
B.	Plaintiff's Claims Fail Because They Were Not Filed Within The Applicable Limitations Period.....	6
1.	There is evidence that Plaintiff was aware of his injuries, and his claim accrued, by November 2, 2016, in which case the statute of limitations expired on September 17, 2019.....	7
2.	In the alternative, there is evidence that Plaintiff was aware of his injuries, and his claim accrued, by April 24, 2017, in which case the statute of limitations expired on March 10, 2020.....	8
3.	At The Latest, Plaintiff's Claim Accrued And the Statute Of Limitations Began Running by July 5, 2017, When He Filed His Inquiries With The MICP.....	9
C.	KMS Defendants Are Entitled To Summary Judgment Because Plaintiff Did Not Timely Disclose Expert Medical Opinion Supporting His Allegations Of Negligence Or Causation.	13
1.	Plaintiff cannot satisfy his burden without expert testimony establishing the standard of care and breach.....	13
2.	Plaintiff Cannot Satisfy His Burden Without Expert	
3.	KMS Defendants' Medical Expert Supports All Aspects of Dr. O'Donnell's Care of Plaintiff.....	15
D.	Plaintiff's Fraud Claim Fails.....	16
E.	Plaintiff's IIED Claim Fails	17
F.	Plaintiff's Product Liability Claim Fails.....	18
G.	Plaintiff's Breach of Contract Claim Fails.....	18

H.	To the Extent Plaintiff's Breach of Contract Claim is Interpreted as an Informed Consent Claim, Plaintiff's Informed Consent Claim Fails Without Expert Testimony.....	19
V.	CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Au v. Au</i> , 63 Haw. 210, 626 P.2d 173 (1981)	18
<i>Barbee v. Queen's Med. Ctr.</i> , 119 Hawaii 136, 194 P.3d 1098 (Ct. App. 2008)	14
<i>Barcai v. Betwee</i> , 98 Hawai'i 470, 50 P.3d 946 (2002)	5
<i>Campos v. Marrhey Care Home, LLC</i> , 128 Hawai'i 405, 289 P.3d 1041 (App. 2012)	12
<i>Carr v. Strode</i> , 79 Hawai'i 475, 904 P.2d 489 (1995)	5, 19, 20
<i>Craft v. Peebles</i> , 78 Hawai'i 287, 893 P.2d 138 (1995)	13
<i>Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co.</i> , 116 Hawai'i 277, 172 P.3d 1021 (2007)	4
<i>Garcia v. Kaiser Found. Hosps.</i> , 90 Hawai'i 425, 978 P.2d 863 (1999)	6
<i>Hac v. Univ. of Hawaii</i> , 102 Hawai'i 92, 73 P.3d 46 (2003)	17
<i>Higa v. Mirikitani</i> , 55 Haw. 167, 517 P.2d 1 (1973)	18
<i>Hirahara v. Tanaka</i> , 87 Hawai'i 460, 959 P.2d 830 (1998)	18
<i>Larsen v. Pacesetter Sys., Inc.</i> , 74 Haw. 1, 837 P.2d 1273 (1992)	19
<i>Morinoue v. Roy</i> , 86 Hawai'i 76, 947 P.2d 944 (1997)	4
<i>Ngo v. Queen's Med. Ctr.</i> , 136 Hawai'i 54, 358 P.3d 26 (2015)	19, 20
<i>Nishi v. Hartwell</i> , 52 Haw. 188, 473 P.2d 116 (1970)	6, 13, 18

<i>Shoppe v. Gucci Am., Inc.</i> , 94 Hawai`i 368, 14 P.3d 1049 (2000).....	16
<i>Territory of Hawaii v. Branco</i> , 42 Haw. 304 (1958)	6, 18
<i>Wagatsuma v. Patch</i> , 10 Haw. App. 547, 879 P.2d 572 (1994)	18
<i>Young v. Allstate Ins. Co.</i> , 119 Hawai`i 403, 198 P.3d 666 (2008).....	17

Statutes

HRS § 657-7	6
HRS § 657-7.3	<i>passim</i>
HRS § 671-1	4, 5
HRS § 671-12	2, 7
HRS § 671-15	2
HRS § 671-16	8
HRS § 671-18	<i>passim</i>

Other Authorities

Hawai`i Rules of Civil Procedure Rule 56(c)	4
---	---

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Defendants PATRICK J. O'DONNELL, M.D., SUSAN TAN, M.D., and KAPI'OLANI MEDICAL SPECIALISTS (collectively, "KMS Defendants") are entitled to summary judgment on Plaintiff's First Amended Complaint ("FAC", Ex. A), given Plaintiff's failure to comply with HRS Chapter 657, which required Plaintiff to bring an action for alleged medical tort against KMS Defendants within two years after discovering his alleged injuries or when such injuries reasonably could have been discovered, subject to applicable periods of tolling set forth in HRS Chapter 671. *See* HRS § 657-7.3, and 671-18. Even taking all of the allegations in the FAC as true, Plaintiff failed to file his claims within the applicable limitations period.

Additionally, even had Plaintiff's action been timely filed, Plaintiff did not timely disclose any opinion report by a competent expert opining that any KMS Defendant breached the applicable standard of care or caused Plaintiff's damages. Without an expert to establish (1) the standard of care applicable to Dr. O'Donnell and Dr. Tan, (2) breach of that standard, and (3) causation, or the materiality of risk with regard to any claim that KMS Defendants failed to obtain informed consent, and there is no evidence to support Plaintiff's remaining subclaims for intentional infliction of emotional distress, fraud, and product liability. Plaintiff's claims fail as a matter of law and summary judgment must be entered in KMS Defendants' favor.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

Plaintiff filed his original Complaint in this Court on May 25, 2021 alleging medical negligence — specifically medical malpractice, battery, and assault. Ex. B (Complaint). On May 26, 2023 Plaintiff was retroactively granted leave to file a First Amended Complaint ("FAC", Ex. A).

According to the FAC, Plaintiff alleges he was referred to defendant Patrick J. O'Donnell, M.D., an otolaryngologist at Kapi'olani Medical Center for Women and Children (KMCWC), for treatment of nasal valve collapse.¹ Ex. A, FAC at ¶5. Plaintiff alleges that at an

¹ Plaintiff's original Complaint and FAC contain multiple allegations setting forth in the public arena what otherwise would be his confidential protected health information. Because Plaintiff has affirmatively alleged these facts and put into the public record what otherwise would be confidential, KMS Defendants have not sought to redact or seal their references to these portions of the publicly filed FAC.

initial consultation on February 26, 2016, he requested a “single minor surgical procedure”, that Dr. O’Donnell agreed and represented it would be a two-surgeon operation with co-defendant Susan Tan, M.D. *Id.* at ¶9. Plaintiff further alleges that he did not believe general anesthesia was necessary for the requested procedure but was not offered alternatives and, after the surgeries, was told of an internal “nose cones” product that could brace his nostrils without surgery. *Id.* at ¶10.

Plaintiff contends that all surgical procedures took place on May 26, 2016 at KMCWC and alleges that he was “fully anesthetized” approximately two and one-half hours before surgery in a secluded room, resulting in hypothermia at the start of the procedure. *Id.* at ¶¶11, 31, 32. Plaintiff alleges that Dr. O’Donnell broke his turbinate “bones” and “cut out” his adenoid, and that he was never informed of this. *Id.* at ¶¶77-82.

Although not specifically described in the FAC, on **July 5, 2017**, Plaintiff submitted two Inquiries related to the same procedure and alleged medical negligence to the Medical Inquiry and Conciliation Panel (“MICP”) as required by HRS § 671-12. *See* Exhibit “C-1,” 7/25/2017 Notice of MICP Inquiry No. 2017-052; Exhibit “C-2,” 7/5/2017 Inquiry Regarding Rendering of Professional Services No. 2017-052; Exhibit “D-1,” 8/1/2017 Notice of MICP Inquiry No. 2017-053; Exhibit “D-2,” 7/5/2017 Inquiry Regarding Rendering of Professional Services No. 2017-053; and the Declaration of John-Anderson L. Meyer (“Meyer Dec.”) ¶¶5-8. Mr. James was ordered by the MICP to provide a more definite statement of his claims in both Inquiries, and his consolidated More Definite Statement was provided to the Respondents on September 6, 2017. *See* Exhibit “E,” 9/6/2017 letter from the MICP Hearings Officer, enclosing More Definite Statement.

Pursuant to HRS § 671-15, following completion of the MICP process, Plaintiff was notified on **March 21, 2018** by the MICP of the termination of proceedings; this notification expressly advised Plaintiff of the relevant statute of limitations tolling provisions in HRS § 671-18. *See* Exs. F 3/21/2018 MICP No. 2017-052 Termination letter; and G, 3/21/2018 MICP No. 2017-053 Termination letter.

Plaintiff filed his original Complaint on **May 25, 2021**, *more than two years after termination of the MICP proceedings and the resumption of the running of the limitations period*, and far beyond any conceivable calculation of the applicable time within which he could initiate an action arising out of his May 26, 2016 procedure.

From the filing of the FAC through the discovery cutoff, Plaintiff did not disclose any expert, and did not request any extension of time for his expert disclosure deadline. Meyer Dec. ¶12.

Plaintiffs' expert disclosure deadline and final naming of witnesses expired on January 20, 2026 (120 days prior to trial). *See* Ex. H, Trial Setting Order. No expert report was served by Plaintiff by his January 20, 2026 deadline; Plaintiff filed a very tardy final naming of witnesses on March 8, 2026, with no explanation or excuse for not having timely filed and identified his witnesses (*see* Dkt. 287)—no expert witness for the Plaintiff (other than cross examination of the Defendants' experts) was identified in this filing, either. Meyer Dec. ¶14. The discovery deadline passed on March 19, 2026. *Id.*

B. Discovery

KMS Defendants served discovery requests on Plaintiff on September 29, 2025. Following several months of non-responsiveness, necessitating KMS Defendants' Motion to Compel (Dkt. 198), Plaintiff responded on February 25, 2026, approximately one month after his expert disclosures were due. Ex. I, Plaintiff's Document Production Responses. Request Nos. 17 and 18 specifically asked Plaintiff about the opinions and documents from any expert. Plaintiff's response was: "*Plaintiff has not yet retained a testifying expert for trial.*" Plaintiff will supplement this response and produce responsive documents in accordance with the Court's scheduled order for expert disclosures *if an expert is retained*. Ex. I at 5 (emphasis added).

On January 2, 2026 KMS Defendants filed their Motion for Judgment on the Pleadings (Dkt. 195). The Court granted the Motion, and dismissed "causes of action" Sections (A), (B), (C), (F), (G), and (H). Dkt. 333. Plaintiff filed a Motion for Reconsideration (Dkt. 240), which was denied (Dkt. 321).

The only remaining claims in the FAC are Section (D)-Medical Malpractice; and Section (E)-Breach of Contract. Under his Medical Malpractice claim, Plaintiff alleges: (1) Assault in the First Degree; (2) False Imprisonment in the First Degree; (3) Fraud; (4) Intentional Infliction of Emotional Distress; (5) Product Liability; and (6) Unnecessary Actions. FAC at 9-11. Under his Breach of Contract claim, Plaintiff alleges he made a deal with Dr. O'Donnell to use ear cartilage to brace vestibule collapse on February 26, 2016 which he claims was their first and only encounter before the day of surgery.

KMS Defendants move for summary judgment on all claims.

III. LEGAL STANDARD

A. Summary Judgment Standard.

Under Rule 56(c) of the Hawai'i Rules of Civil Procedure, summary judgment shall be entered "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 and that the moving party is entitled to a judgment as a matter of law." *Morinoue v. Roy*, 86 Hawai'i 76, 80, 947 P.2d 944, 948 (1997). A fact is material "if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. *Id.*

Where the moving party is the defendant, who does not bear the ultimate burden of proof at trial, summary judgment is proper when the non-moving party-plaintiff fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co., 116 Hawai'i 277, 302, 172 P.3d 1021, 1046 (2007) (citation omitted; formatting adjusted).

B. HRS § 657-7.3

Pursuant to HRS § 657-7.3 ("Medical torts; limitation of actions; time"), "[n]o action for injury or death against a . . . nurse, . . . physician or surgeon . . . or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be brought more than two years after plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury." HRS § 657-7.3(a).

"Medical tort" means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient. HRS § 671-1.

C. HRS § 671-18

Pursuant to HRS § 671-18, "[t]he filing of the inquiry with the medical inquiry and conciliation panel or with an approved or agreed upon alternative dispute resolution provider shall toll any applicable statute of limitations, and the statute of limitations shall remain tolled until sixty days after the termination of the panel."

D. Informed Consent

To establish a claim of negligent failure to obtain informed consent under Hawai'i law, the plaintiff must demonstrate that:

(1) the physician owed a duty to disclose the **risk** of one or more of the collateral injuries that the patient suffered; (2) the physician breached that duty; (3) the patient suffered injury; (4) the physician's breach of duty was a cause of the patient's injury in that (a) the physician's treatment was a substantial factor in bringing about the patient's injury and (b) a reasonable person in the plaintiff patient's position would not have consented to the treatment that led to the injuries had the plaintiff patient been properly informed; and (5) no other cause is a superseding cause of the patient's injury.

Barcai v. Betwee, 98 Hawai'i 470, 483, 50 P.3d 946, 959 (2002) (emphasis added). Hawai'i courts have repeatedly explained that in meeting the first element, expert testimony will still be required to establish "the nature of risks inherent in a particular treatment, the probabilities of therapeutic success, the frequency of the occurrence of particular risks, and the nature of available alternatives to treatment." *Id.* See also, *Carr v. Strobe*, 79 Hawai'i 475, 484, 904 P.2d 489, 498 (1995) (citing *Bernard v. Char*, 79 Hawai'i 371, 903 P.2d 676 (App. 1995), *cert. granted*, 78 Hawai'i 474, 896 P.2d 930 (1995)).

IV. ARGUMENT

A. Hawai'i Revised Statutes § 657-7.3 Is The Applicable Statute Of Limitations

Plaintiff's remaining claim against healthcare providers for "medical malpractice," such claims amount to "medical torts" (defined at HRS § 671-1), subject to the limitations period set forth in HRS § 657-7.3:

No action for injury or death against a . . . nurse . . . physician or surgeon . . . or a licensed hospital as the employer of such person, ***based upon such person's alleged professional negligence, or for rendering professional services without consent***, or for error or omission in such person's practice, shall be brought more than ***two years*** after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury.

HRS § 657-7.3 (emphasis added).

Plaintiff's FAC specifically names three medical doctors, a registered nurse, a physician practice group (KMS), and a hospital (KMCWC) as Defendants. The thrust of Plaintiff's FAC is based on allegations of professional negligence during a surgical procedure on his nose, and

Plaintiff alleges that his consent was not obtained for the surgical procedures performed on him. *See, generally, Ex. A, FAC.* Plaintiff's FAC thus falls squarely within the confines of the two-year limitations period set out under HRS § 657-7.3.

The Supreme Court of Hawai'i has held that a plaintiff's arbitrary framing of a complaint and/or theory of the case will not stand if the underlying facts show that a different legal theory is more appropriate. *See Nishi v. Hartwell*, 52 Haw. 188, 191, 473 P.2d 116, 119 (1970), overruled on other grounds by *Carr*, 79 Hawai'i 475, 904 P.2d 489; *Territory of Hawaii v. Branco*, 42 Haw. 304, 311 (1958). Plaintiff's styling of his medical malpractice claim as one for "Breach of contract" (*see* FAC Section (E), at ¶102.), in order to establish a breach of contract claim in a medical malpractice case, does not avail him as he has neither alleged nor produced evidence sufficient to remove his medial tort claims from the negligence realm to that sounding in contract.

Similarly, Plaintiff cannot avoid the application of HRS § 657-7.3 by styling his claim as one for "Assault in the First Degree," "False Imprisonment in the First Degree," "Fraud" and "Unnecessary Actions" rather than for a medical tort. *See Garcia v. Kaiser Found. Hosps.*, 90 Hawai'i 425, 440-41, 978 P.2d 863, 878-79 (1999) (holding that when Plaintiffs' claims concerned the conduct of a health care professional acting in his professional capacity as a physician, Plaintiffs' characterization of claims in their complaint as "fraud" rather than "medical torts" was irrelevant since Plaintiffs' claims were clearly claims for "medical torts" governed by HRS Chapter 671). However, even if Plaintiff's claims somehow were not medical torts falling under HRS § 657-7.3, a claim for personal injury has a similar two-year limitations period: "actions for the recovery of compensation for damage or injury to persons or property shall be instituted within two years after the cause of action accrued, and not after[.]" HRS § 657-7. Any way they are parsed, Plaintiff's claims are barred if not brought within two years after the claims accrued—*i.e.*, when the plaintiff discovered, or through the use of reasonable diligence should have discovered, the injury.

B. Plaintiff's Claims Fail Because They Were Not Filed Within The Applicable Limitations Period

The two-year (730-day) limitations period began running when Plaintiff discovered, or through reasonable diligence should have discovered, his injuries. *See*, HRS § 657-7.3(a).

Plaintiff's medical records provided with his initial Complaint (Ex. B), and his documents filed with the MICP both indicate that he had discovered any alleged injuries well before he filed his MICP Inquires.

1. There is evidence that Plaintiff was aware of his injuries, and his claim accrued, by November 2, 2016, in which case the statute of limitations expired on September 17, 2019.

It appears that on **November 2, 2016**, approximately 5 months after the May 26, 2016 procedure, Plaintiff visited Daniel S. Alam, MD ("Dr. Alam") at the Head and Neck Institute. It appears that on March 14, 2017, Dr. Alam completed a late entry note of that November 2, 2016 visit, and documented his impression that Mr. James' condition was "suggestive of empty nose syndrome." *See*, Dr. Alam's 3/14/2017 Progress Note, attached as part of Exhibit "5" to the Complaint (Exhibit "B" hereto). Dr. Alam's Progress Note mentions empty nose syndrome, which Plaintiff expressly references in his Complaint. *See*, Exhibit "B," Complaint, at 3, third paragraph. Dr. Alam's Progress Note also indicates his discussion with Plaintiff on November 2, 2016, and is evidence that Plaintiff was aware of his alleged injuries by that date. Based on Plaintiff's visit to Dr. Alam, he was aware of a potential claim arising out of the May 26, 2016 procedure—and thus his claims accrued—by **November 2, 2016**, by which Date Plaintiff had been told by Dr. Alam that his condition was "suggestive of empty nose syndrome."

On **July 5, 2017**, as required by HRS § 671-12, Plaintiff filed his Inquiries with the MICP, asserting medical negligence in connection with the May 26, 2016 procedure. *See* Exhibits "C" and "D," Notices of the inquiries, and Inquiry statements. By the time Plaintiff submitted these inquiries, 245 days (out of the total allotted 730 days) had elapsed since the limitations period began, using the November 2, 2016 accrual date from Plaintiff's visit with Dr. Alam. Hence, on July 5, 2017, Plaintiff had only 485 days remaining under the statute of limitations.

The limitations period was tolled on July 5, 2017 when he filed his Inquiries with the MICP, pursuant to HRS § 671-18. However, on **March 21, 2018**, Plaintiff received notices of termination from the MICP. *See*, Exhibits "F," and "G," Termination letters. As explained in the termination letters, pursuant to HRS § 671-18, the statute of limitations remained tolled "until sixty days after the termination of the panel." Accordingly, with termination letters dated March 21, 2018, the limitations period began running again on **May 20, 2018**. Although the statute of limitations remained tolled until May 20, 2018, Plaintiff was free to institute litigation once the

MICP proceeding had been terminated on March 21, 2018 pursuant to HRS § 671-16(a), and was explicitly notified of this right in the termination letters. *See*, Exhibits “F,” and “G,”

Termination letters. Plaintiff did not do so. Using the November 2, 2016 visit with Dr. Alam as the accrual date, when the Statute of Limitations began running again on May 20, 2018, Plaintiff still had 485 days, or ***until September 17, 2019*** to file a Complaint.

For ease of reference the relevant events and timeline for the statute of limitations calculation using November 2, 2016 as the accrual date is below:

Date	Event
November 2, 2016	The date Mr. James visited Dr. Alam (started running of SOL until July 5, 2017).
July 5, 2017	Mr. James files inquiries with the MICP, tolling the SOL (245 days (out of 730 total) had elapsed <i>after</i> his visit to Dr. Alam).
March 21, 2018	Mr. James receives termination letters from the MICP.
May 20, 2018	Last day of the MICP tolling period
May 21, 2018	Limitations period starts running again (with 485 days remaining)
September 17, 2019	The last day on which Mr. James could have filed his Complaint.
May 25, 2021	The date Mr. James actually filed his Complaint.

Because Plaintiff did not file his original Complaint until **May 25, 2021**, ***more than a year after the September 17, 2019 expiration of the limitations period***, his claims against all Defendants are now barred.

2. In the alternative, there is evidence that Plaintiff was aware of his injuries, and his claim accrued, by April 24, 2017, in which case the statute of limitations expired on March 8, 2020.

According to Exhibit “5” filed with the original Complaint, Plaintiff saw Roland F.S. Tam, MD (“Dr. Tam”) on April 21, 2017; Dr. Tam completed his report of that visit on April 24, 2017. *See*, April 24, 2017 report by Dr. Tam, attached as part of Exhibit “5” to the Complaint. Assuming in the alternative that Plaintiff’s visit to Dr. Alam on November 2, 2016 did not provide the necessary notice to him for his claim to accrue and the running of the limitations period to commence, Plaintiff’s visit to Dr. Tam is evidence that he had discovered his injuries by **April 24, 2017**, the date of Dr. Tam’s report of the April 21 visit.

Based on Plaintiff's visit to Dr. Tam, Plaintiff's claim accrued, and the limitations period for any claim arising out of the May 26, 2016 procedure began running on **April 24, 2017** (the date of Dr. Tam's report). When the limitations period was tolled on July 5, 2017 with the filing of his MICP Inquiries, Plaintiff had only 658 days remaining on the limitations period. When the limitations period began running again on May 20, 2018, Plaintiff had until **March 8, 2020** to file his Complaint. As discussed above, Plaintiff did not file his Complaint until **May 25, 2021**, *more than a year after the March 8, 2020* deadline.

For ease of reference the relevant events and timeline for the statute of limitations calculation using April 24, 2017 as the accrual date is below:

Date	Event
April 24, 2017	The date Mr. James visited Dr. Tam (started running of SOL until July 5, 2017).
July 5, 2017	Mr. James files inquiries with the MICP, tolling the SOL (72 days (out of 730 total) had elapsed <i>after</i> his visit to Dr. Tam).
March 21, 2018	Mr. James receives termination letters from the MICP.
May 20, 2018	Last day of the MICP tolling period
May 21, 2018	Limitations period starts running again (with 658 days remaining)
March 8, 2020	The last day on which Mr. James could have filed his Complaint.
May 25, 2021	The date Mr. James actually filed his Complaint.

Even putting aside Plaintiff's own evidence of his visit to Dr. Alam on November 2, 2016, and using the later date of Dr. Tam's report as the accrual date, Plaintiff failed to file his original Complaint by the end of the limitations period. Accordingly, his claims against all Defendants are time-barred.

3. At The Latest, Plaintiff's Claim Accrued And the Statute Of Limitations Began Running by July 5, 2017, When He Filed His Inquiries With The MICP

Even setting aside Plaintiff's visits to both Dr. Alam on November 2, 2016, and Dr. Tam on April 21, 2017, Plaintiff's claims are still barred by application of HRS § 657-7.3. Plaintiff filed his Inquiries with the MICP on July 5, 2017, which indicates that as of that date (*at the very latest*), he had discovered the alleged negligence and his injuries, and his claim had accrued. The Inquiries and More Definite Statement filed by Plaintiff address all of the same claims raised in the Complaint and speak for themselves.

In his first Inquiry (Exhibit “C-2,” Inquiry No. 2017-052), Mr. James asserted the following alleged negligent acts:

IV. What are the alleged negligent acts or omissions that fell below the applicable standard of care?

intentionally surgically opening on patient against his will skipping informed consent. ~~Intentional~~ Deception, & Fraudulently Doctoring medical Records, Performing Unnecessary Surgical procedures. Fraudulently Billing Insurance. organizational Executives creating & maintaining and Policy environment where Patients are harmed. staff: not verifying informed consent

DATED: Honolulu (County) Hawai'i, July 5 2017 (Date)

Jared James
Signature

Rose Cenczo
Fraudulently
withholding
informed
consent.

Exhibit “C-2,” at 2.

In his second Inquiry (Exhibit “D-2,” Inquiry No. 2017-053), Mr. James asserted the following alleged negligent acts:

IV. What are the alleged negligent acts or omissions that fell below the applicable standard of care?

Not Monitoring Sedated Patients vitals for 24 hours
Keeping patient sedated for extremely long period of time
against will without consent. Giving patient
Hypothermia, and continuing operation.
Hospital staff cited created invasion ment for Patient Harm

DATED: Honolulu (County) Hawai'i, 7 5 17 (Date)

Jared James
Signature

Exhibit “D-2,” at 2.

In response to the MICP’s Order granting the Respondents’ request for a more definite statement, Plaintiff clarified the scope of his allegations in his Inquiries. See Exhibit “E,” More Definite Statement. Plaintiff asserted claims in his original Complaint that were *identical* to those claims brought in MICP Inquiry Nos. 2017-052 and 2017-053, above, and as more specifically set forth in Plaintiff’s More Definite Statement:

Original Complaint (Exhibit “B”)	More Definite Statement (Exhibit “E”)
On May 26, 2016 Kapiolani Medical Center did surgery on me without Consent. (p1, ¶1)	1. Dr. Patrick O’Donnell intentionally cut out pieces of patients [sic] Jared James [sic] face

Original Complaint (Exhibit “B”)	More Definite Statement (Exhibit “E”)
	and oxygen system without consent or privilege, while patient was sedated.
The day of surgery, Dr. Patrick O’Donnell skipped the informed consent process and did numerous surgeries on me against my will. I have never met Dr. Susan Tan, presumably she entered the operating room after I was sedated and left before I regained consciousness, also skipping informed consent. (p1, ¶2)	4. Patient came in for surgery on May 26, 2016. Surgeon Dr. Patrick O’Donnell skipped the informed consent process, and Dr. Susan Tan Skipped the informed consent process. Dr. Selena Peters did improper and incomplete informed consent.
Dr. Patrick O’Donnell cut out soft-tissue in my turbinates (air processing organs), he also cut out a large portion of the septal cartilage (the cartilage in between the nostrils), and used that to to [sic] brace the nasal valves, instead of ear cartilage. (p1, ¶2) Dr. O’Donnell also stuck a metal rod called a “Goldman Bar” into my skull and broke bone(s) inside my sinuse(s) (p1, ¶3)	5. While patient was sedated Dr. Patrick O’Donnell and Dr. Susan Tan cut out the septal cartilage in the tip of the patients [sic] face and nose, and cut that up and used it to brace patients [sic] collapsing vestibules. Dr. Patrick O’Donnell and Dr. Susan Tan cut out patients [sic] inferior turbinate tissue, Dr. Patrick O’Donnell and Dr. Susan stuck a rod into patients [sic] face and broke bones inside of patients [sic] face and skull.
After surgery I questioned Dr. O’Donnell (in meetings I audio recorded) and he explained and drew on a diagram telling me he cut the back of the septal cartilage out during surgery, when in fact he cut the front of it out, which is easily provable. (p1, ¶2)	8. Post-OP Dr. Patrick O’Donnell repeatedly and demonstrably lied to patient about what he did to patient in surgery, and Dr. Susan Tan has never talked to patient.
I now have a diagnosed condition called Empty Nose Syndrome (ENS) [...] which is horribly painful and affects me every day of my life, every second. Every breathe [sic] I take is painful, and the more I breathe the more pain I feel. (p1, ¶3)	14. Empty Nose Syndrome is formally classified as an iatrogenic disease meaning it is caused by surgery. Empty Nose Syndrome causes pain and suffocation and has a high likelihood of suicide, debility, and is currently incurable.
Dr. Patrick O’Donnell and Rosel Cerezo both signed as witnesses on an informed consent document dated March 1, 2016. (p1, ¶4)	12. Rosel Cerezo and Dr. Patrick O’Donnell fraudulently signed and witnessed a fraudulent informed consent document on March 1, 2016.
Dr. O’Donnell did surgery on me while I was hypothermic. From the moment they started surgery and monitored my core body temperature at 11:30am I was hypothermic at	4. Patient was sedated against his will for 2+ hours before the documented surgery started at about 11:30am. This undocumented and unmonitored sedation gave patient unintended

Original Complaint (Exhibit “B”)	More Definite Statement (Exhibit “E”)
94.2 degrees fahrenheit [sic], until the end of the recorded surgery at 1:10pm at 94.9 degrees fahrenheit [sic]. (p2, ¶1)	periodontic hypothermia. Patient had hypothermia from the very beginning of the monitored surgery at 11:30am but the 2+ hour surgical procedures were performed anyway.

Based on the foregoing, the claims brought by Plaintiff in his original Complaint were substantively identical to those raised in his MICP Inquiries. As such, all the claims pled in his original Complaint, and his subsequent FAC, accrued *at the very latest* at the time he filed his Inquiries with the MICP on **July 5, 2017**. As such, the latest date on which Plaintiff’s claims accrued, and the date on which the limitations period began to run was **July 5, 2017**, the date Plaintiff filed his Inquiries². As discussed previously, the filing of Inquiries with the MICP on July 5, 2017 would have tolled the limitations period until May 20, 2018. Thus, Plaintiff would have had until **May 20, 2020** at the latest to file his original Complaint.

For ease of reference the relevant events and timeline for the statute of limitations calculation using the July 5, filing of his MICP Inquiries as the accrual date is below:

Date	Event
July 5, 2017	Mr. James files Inquiries with the MICP, tolling the SOL
March 21, 2018	Mr. James receives termination letters from the MICP
May 20, 2018	Last day of the tolling period
May 21, 2018	Limitations period starts running again (with 730 days/2 years remaining)
May 20, 2020	The last day on which Mr. James could have filed his Complaint.
May 25, 2021	The date that Mr. James actually filed his Complaint.

² Notably, any claims that might be alleged in his original Complaint that Plaintiff failed to identify in his Inquiries are barred by HRS Chapter 671, as this Court has no jurisdiction over medical negligence claims that have not first been brought before the MICP in a timely manner. *See, e.g., Campos v. Marrhey Care Home, LLC*, 128 Hawai’i 405, 408, 289 P.3d 1041, 1044 (App. 2012) (“[A] person cannot file suit for a medical tort, and the court lacks jurisdiction, unless the medical tort claim is first submitted to an MCCC.”) Accordingly, there are only two alternatives here regarding the scope of Plaintiff’s claims—in both alternatives this Court lacks jurisdiction. Either (1) *all* of Plaintiff’s claims in his original Complaint were previously raised with the MICP, in which case the passage of the statute of limitations bars this Court from hearing them, or (2) the claims in the Complaint were *not* first brought before MICP, in which case this Court lacks subject matter jurisdiction over those claims under HRS Ch. 671.

Using even this latest possible accrual date, and the broadest possible interpretation of the limitations period, Plaintiff failed to file his original Complaint by the end of the limitations period. Accordingly, his claims against KMS Defendants are time-barred.

C. KMS Defendants Are Entitled To Summary Judgment Because Plaintiff Did Not Timely Disclose Expert Medical Opinion Supporting His Allegations Of Negligence Or Causation.

1. Plaintiff cannot satisfy his burden without expert testimony establishing the standard of care and breach.

Even were Plaintiff's claims not barred by the applicable statute of limitations (as discussed above, they are), KMS Defendants are still entitled to summary judgment in their favor, based on Plaintiff's failure to timely disclose the sort of expert opinions required to establish the essential elements of his claim, upon which he bears the burden of proof.

The FAC generally alleges that KMS Defendants' care and treatment of Plaintiff fell below the standard of care, causing him damages. *See* Ex. A, FAC. But all of these theories referenced in the FAC are nothing more than *allegations*³. Plaintiff has the burden of actually proving the standard of care and breach. "It is well settled that in medical malpractice actions, the question of negligence must be decided by reference to relevant medical standards of care for which the plaintiff carries the burden of proving through expert medical testimony." *See Craft v. Peebles*, 78 Haw. 287, 298, 893 P.2d 138, 149 (1995) (citing *Nishi*, 52 Haw. 188, 195, 473 P.2d 116, 121 (1970)). It is not enough to simply *allege* what the standard of care is without medical expert testimony *establishing* the standard of care. Indeed, "[t]he standard of care to which a doctor has failed to adhere must be established by expert testimony because a jury generally lacks the 'requisite special knowledge, technical training, and background to be able to determine the applicable standard without the assistance of an expert.'" *Id.*

Despite having had years to procure and produce an expert to establish the standard of care and any breach of that standard by Dr. O'Donnell and Dr. Tan, Plaintiff has failed to timely do so. ***No expert report was served by Plaintiff by his January 20, 2026 deadline***; no expert was identified in his very tardy discovery responses; and no expert (other than cross examination of Defendants' experts) was identified in his untimely final naming of witnesses, filed March 8, 2026 (Dkt. 287).

³ Notably, Plaintiff pleads "Assault in the First Degree," "False Imprisonment in the First Degree," and "Unnecessary Actions" claims as subsections of his Medical Malpractice claim, but these are merely medical malpractice claims.

Expert opinion testimony to establish the applicable standard of care is required. This is an essential element of Plaintiff's claim, upon which he bears the burden of proof. Because Plaintiff has failed to satisfy this basic burden, summary judgment in KMS Defendants' favor is required.

2. Plaintiff Cannot Satisfy His Burden Without Expert Testimony Establishing Causation.

In addition to expert testimony establishing (1) the standard of care and (2) breach, Plaintiff must also prove that a breach of the standard of care (3) *caused* the injuries alleged. Without an expert, Plaintiff cannot prove causation, which is fatal to his case. *Barbee v. Queen's Med. Ctr.*, 119 Hawaii 136, 139, 194 P.3d 1098, 1101 (Ct. App. 2008), as corrected (Nov. 5, 2008) is instructive and conclusive on this point.

In *Barbee*, the plaintiff alleged that nurse and physician employees of The Queen's Medical Center ("Queen's") failed to adequately monitor and treat Barbee after he underwent laparoscopic surgery on July 24, 2001. *Id.*, 119 Hawai'i at 139, 194 P.3d at 1101. They claimed that Queen's failed to timely recognize that Barbee had internal bleeding, which ultimately required a second surgery. *Id.* Barbee died seventeen months later. *Id.* At trial, although Barbee's son testified that his father's death was a late consequence of the internal bleeding, the plaintiffs offered no medical expert testimony that there was any causal connection between the post-operative hemorrhage in July 2001 and Barbee's death in December 2002. *See id.*, 119 Hawai'i at 142, 194 P.3d at 1104.

Based on the lack of expert causation evidence, the trial court set aside the jury's special verdict in the plaintiffs' favor and granted defense motions for judgment as a matter of law. *Id.*, 119 Hawai'i at 145, 194 P.3d at 1107. The Court of Appeals affirmed that the plaintiffs' failure to produce any evidence by a competent medical expert regarding the cause of Barbee's death precluded plaintiffs' recovery. *Id.*

Under *Barbee*, Plaintiff here is required to produce expert medical testimony to establish causation. In other words, medical experts must testify that some conduct by Defendant breached the standard of care, and must prove a ***causal relationship between that breach and Plaintiff's purported injuries***. On this record, there is a complete lack of any expert testimony establishing (1) the standard of care or (2) the breach of that standard; or (3) causation.

Plaintiff has not provided any experts that Dr. O'Donnell or Dr. Tan breached the standard of care, or that their breach was the legal cause of Plaintiff's damages to a reasonable degree of medical probability. The lack of expert testimony is dispositive.

3. KMS Defendants' Medical Expert Supports All Aspects of Dr. O'Donnell's Care of Plaintiff

KMS Defendants' expert, Dr. Marc Stiefel, explicitly states that Dr. O'Donnell met the standard of care applicable to otolaryngologists:

After reviewing the medical records available to me regarding the care of Jared James by Dr. Patrick O'Donnell, I find no evidence that Dr. O'Donnell breached the standard of care in any way. Dr. O'Donnell first saw Mr. James in the office and appropriately evaluated him, noting his previous history of nasal surgery. He diagnosed Mr. James with external nasal valve collapse and, after thoughtful consideration and in consultation with his partner Dr. Tan, offered to repair the nasal valve collapse surgically...

Dr. O'Donnell had no idea which method was employed in the previous septoplasty for Mr. James, and thereby had no idea whether or not any cartilage would be present in the nose that would be suitable to act as a graft for his needs-this information could not have been gleaned from the examination and nasal endoscopy he had previously performed on February 26, 2016. He therefore, appropriately, decided to consent Mr. James for harvesting of an autologous donor site, in this case the right auricle...

For any surgery where the status of the preferred graft site is unknown, it is commonplace to consent the patient to harvest a graft from an additional site, a procedure to be performed if needed. This need is left up to the intraoperative discretion of the primary surgeon and his team....

In summary, Dr. O'Donnell performed an appropriate procedure, in an appropriate fashion, using an appropriate cartilage graft, that met the standard of care expected of an otolaryngologist...

It was obviously Dr. O'Donnell's hope that Mr. James would find his nasal breathing improved after completing this procedure. However, it was disclosed to him preoperatively, and documented appropriately in the notes from the preoperative visit, that a risk of nasal surgery is that there may be no significant subjective improvement in nasal symptoms. . .By appropriately disclosing to Mr. James that he may not experience any improvement in his nose postoperatively, and performing an proper surgery in an attempt to relieve Mr. James of his nasal obstruction, Dr. O'Donnell most

certainly met the standard of care. When Mr. James still had the same complaints postoperatively, Dr. O'Donnell appropriately referred him to a tertiary care center and to facial plastics surgeon who could possibly offer him additional treatment options.

Ex. J, at Dr. Stiefel's report at 3-5.

In sum, KMS Defendants' expert has opined on three key issues: 1) that the standard of care was met in all respects by Dr. O'Donnell; 2) that Dr. O'Donnell obtained his informed consent; and 3) that there is no causal relationship between the care and treatment Plaintiff received and his purported injuries. Despite the opportunity to do so, Plaintiff has not presented any competent expert opinion to support his claims or to rebut any opinions by KMS Defendants' expert with respect to (1) standard of care, (2) breach, or (3) causation. Lack of qualified admissible expert opinion testimony is fatal to Plaintiff's claims, and this Motion should be granted.

D. Plaintiff's Fraud Claim Fails

As an initial matter, the allegations underlying Plaintiff's purported fraud claim do not give rise to an actionable claim for fraud. Plaintiff alleges (1) that Ms. Takenaka changed his check-in time to conceal an early anesthesia procedure; (2) that Dr. O'Donnell falsely claimed to have spoken with Plaintiff after the initial meeting on February 26, 2016, when no such communication occurred; (3) that Dr. O'Donnell and Rozel Cerezo fraudulently signed as witnesses to an informed consent process that never took place; and (4) that Dr. O'Donnell claimed to have fully completed an informed consent process on the day of surgery when he did not. These allegations, taken individually or collectively, do not describe fraud. They describe, at most, potential deficiencies in the informed consent process and in medical record-keeping, *i.e.*, medical torts.

Even assuming, *arguendo*, that Plaintiff's allegations could be construed as stating a fraud claim, Plaintiff has failed to produce evidence sufficient to satisfy his burden on each of the required elements: "(1) false representations were made by defendants, (2) with knowledge of their falsity (or without knowledge of their truth or falsity), (3) in contemplation of plaintiff's reliance upon these false representations, and (4) plaintiff did rely upon them." *Shope v. Gucci Am., Inc.*, 94 Hawai'i 368, 386, 14 P.3d 1049, 1067 (2000).

There is no evidence that KMS Defendants made an affirmative false statement to Plaintiff with the intent that Plaintiff rely upon it. In addition, Plaintiff does not allege that he took any action or refrained from taking any action because of the alleged change in check-in

time, the alleged false claims of communication, or the allegedly fraudulent consent signatures. Even if Plaintiff could establish a false representation and reliance, he has not produced evidence that any damages he suffered resulted from reliance on the alleged misrepresentations. The damages Plaintiff seeks flow from the medical procedures he underwent. Plaintiff's fraud claim cannot survive summary judgment.

E. Plaintiff's IIED Claim Fails

The Hawaii Supreme Court has long recognized the tort of intentional infliction of emotional distress. To prevail on an IIED claim in Hawai'i, a plaintiff must demonstrate each of the following elements: (1) that the act allegedly causing the harm was intentional or reckless; (2) that the act was outrageous; (3) that the act caused; (4) extreme emotional distress to another. *Hac v. Univ. of Hawaii*, 102 Hawai'i 92, 107, 73 P.3d 46, 61 (2003). A plaintiff's failure to establish even one element is fatal to the claim. In this case, Plaintiff has failed to establish any of the four required elements.

The first and second element of an IIED claim requires proof that the defendant acted intentionally or recklessly (either desired to cause emotional distress or knew that emotional distress would result from the conduct), and the act was outrageous. Under Hawai'i law, outrageous means "without just cause or excuse and beyond all bounds of decency." *Young v. Allstate Ins. Co.*, 119 Hawai'i 403, 429, 198 P.3d 666, 692 (2008).

Here, Plaintiff has failed to produce any evidence that Dr. O'Donnell acted with the requisite intent or recklessness or outrageousness. In fact, Dr. Stiefel has opined that Dr. O'Donnell met the standard of care, and in doing so, acted reasonably under the circumstances. *See* Ex. J at Stiefel report. Accordingly, Plaintiff cannot satisfy the first or second element of the IIED claim.

The third element of an IIED claim requires proof that the defendant's conduct actually caused the plaintiff's emotional distress. Plaintiff has offered no evidence establishing a causal nexus between any act of Dr. O'Donnell and any alleged emotional distress suffered by Plaintiff. Without evidence of causation, Plaintiff's IIED claim fails.

Finally, Plaintiff has failed to show that any emotional distress he suffered was "extreme." There is no evidence in the record of any medical diagnosis, treatment, or counseling related to emotional distress. Plaintiff claims he is seeing a psychiatrist "Dr. Hyman," however, he has failed to produce any records from Dr. Hyman supporting his alleged IIED claim. *See* Ex. K, Interrogatory responses at 20; *see also* Ex. I. The discovery deadline has passed, and Plaintiff

cannot meet his burden on any of the IIED elements. KMS Defendants are entitled to summary judgment on the IIED subclaim.

F. Plaintiff's Product Liability Claim Fails

Hawai'i product liability law requires a defective *product*. "Generally, a products liability claim based on either negligence or strict liability has three elements: (1) a duty to anticipate and design against reasonably foreseeable hazards; (2) breach of that duty; and (3) injury proximately caused by the breach." *Wagatsuma v. Patch*, 10 Haw. App. 547, 564, 879 P.2d 572, 583 (1994). None of Plaintiff's allegations in the FAC involve a "product," there is no evidence of a defective product, and KMS Defendants are not manufacturers, and therefore have no "duty to anticipate and design against reasonably foreseeable hazards." Thus, Plaintiff's product liability claim subclaim cannot survive summary judgment.

G. Plaintiff's Breach of Contract Claim Fails

As noted above, the Supreme Court of Hawai'i has held that a plaintiff's arbitrary framing of a complaint and/or theory of the case, will not stand if the underlying facts show that a different legal theory is more appropriate. *See Nishi*, 52 Haw. 188, 191, 473 P.2d 116, 119 (1970); *Territory of Hawaii v. Branco*, 42 Haw. 304, 311 (1958).

Although Plaintiff has included in Section (E) of his FAC a claim purportedly sounding in "Breach of Contract," this clever pleading style does not avail him. In order to establish a breach of contract claim in a medical malpractice case, Plaintiff must produce evidence of an express promise to produce certain results in medical treatment. *Higa v. Mirikitani*, 55 Haw. 167, 176 n.9, 517 P.2d 1, 7 n.9 (1973) citing Lillich, *The Malpractice Statute of Limitations in New York and Other Jurisdictions*, 47 Cornell L.Q. 339, 349 (1962) (where it is alleged that a doctor expressly promised to treat the plaintiff so as to produce results in excess of the common-law tort duty of care, a contractual theory would be proper); *see also Au v. Au*, 63 Haw. 210, 219, 626 P.2d 173, 180 (1981) ("A warranty is created when assurances are given that certain results will not occur; if the event does happen, there would exist an independent action for breach of contract warranty"). He has not done so.

The nature of Plaintiff's underlying medical malpractice claim does not change by couching the claim in other terms. "The right of a plaintiff to relief does not depend upon his allegations or his theory of the case." *Nishi*, 52 Haw. at 191, 473 P.2d at 119. "A physician is not an insurer of the results of his diagnosis and treatment." *Hirahara v. Tanaka*, 87 Hawaii 460, 465, 959 P.2d 830, 835 (1998) (internal citation omitted). "In the absence of a special

agreement, physicians or other health-care providers do not warrant, guarantee, or insure a good result or that they will effect a cure, or that their diagnoses will be correct [.]” *See* 70 C.J.S. Physicians and Surgeons, § 68 (1987). When the tortious or contractual nature of the action is in question, “[t]he character of the action should be determined from the facts and issues raised in the complaint, and an important factor is the remedy prayed for.” *Larsen v. Pacesetter Sys., Inc.*, 74 Haw. 1, 51, 837 P.2d 1273, 1298 (1992) (citations omitted).

In *Larsen v. Pacesetter*, plaintiffs alleged tort and contract claims based upon the same set of facts. In holding that plaintiffs’ claims sounded in tort rather than in assumpsit, the court noted that plaintiffs’ alleged injuries sounded entirely in tort:

Plaintiffs [did] not complain of the kinds of economic losses that would result when the expectations of a party to a contract are frustrated. They allege damages which include physical injuries, disability, pain, loss of earnings, medical expenses, and loss of consortium. Therefore, plaintiffs claim injuries that have traditionally been protected, not by an exchange of promises, but by an independent duty imposed by law.

Id. at 52.

The same result applies to the case at bar because Plaintiff’s claims and alleged injuries sound in tort, not contract. The basis of his claim is based upon the purportedly negligent medical care and treatment which allegedly caused him damages. Plaintiff has not produced any “contract” which could serve as a basis to contend that the KMS Defendants breached any contractual obligations with him. There is no viable breach of contract claim here.

H. To the Extent Plaintiff’s Breach of Contract Claim is Interpreted as an Informed Consent Claim, Plaintiff’s Informed Consent Claim Fails Without Expert Testimony.

Assuming *arguendo* that Plaintiff has adequately asserted a claim for failure to obtain informed consent, and assuming further that the facts of this case could support an informed consent claim—they do not—any such informed consent claim fails because Plaintiff has no expert to carry his *prima facie* burden establishing the risks, probability of therapeutic success, or the nature and viability of alternative treatment to support such a claim. *See Carr*, 79 Hawai’i at 486, 904 P.2d at 500; *Ngo v. Queen’s Med. Ctr.*, 136 Hawai’i 54, 68, 358 P.3d 26, 40 (2015), as corrected (Sept. 1, 2015).

The Hawai’i Supreme Court has unambiguously held that expert testimony is required for informed consent claims:

We strongly caution...that our adoption of the patient-oriented standard does not relieve plaintiffs of their burden to provide expert medical testimony as to the “materiality” of the risk; to the contrary, **a plaintiff maintains the burden of adducing expert medical testimony to establish the nature of risks inherent in a particular treatment, the probabilities of therapeutic success, the frequency of the occurrence of particular risks, and the nature of available alternatives to treatment.**

Carr, 79 Hawai‘i at 486, 904 P.2d at 500 (emphasis added) (internal quotations omitted). Following *Carr*, the Hawai‘i Supreme Court further clarified in *Ngo* that plaintiffs must satisfy a two-step process. *See Ngo*, 136 Hawai‘i at 68, 358 P.3d at 40. They must first “adduce[] expert testimony establishing prima facie that the risk of harm that occurred is a ‘recognized material risk of serious complication or mortality...’” *Id.* (See also, Hawai‘i Civil Jury Instruction 14.4, which explicitly requires expert testimony to support an informed consent claim). Here, Plaintiff provides no expert to provide an opinion on this issue. Absent testimony to support his *prima facie* burden on the materiality of the risk, any informed consent claim fails and summary judgment is required.

V. CONCLUSION

For the reasons stated above, the Court should enter summary judgment in favor of KMS Defendants and against Plaintiff as to all remaining claims in the FAC.

DATED: Raglan, New Zealand, March 27, 2026.

/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