

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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WALTER GAHAGAN, by his attorney-in-fact, KATHLEEN Index No.: 702552/2024
GAHAGAN and KATHLEEN GAHAGAN, individually,

Plaintiffs, **VERIFIED ANSWER**

-against-

GREGORY P. SIROKY, MD, BRYAN KAHAN, M.D.,
FRITZLINE MONTALMANT, M.D., ROBERT G.
COLANGELO, ST. FRANCIS HOSPITAL, ROSLYN NEW
YORK D/B/A ST. FRANCIS HOSPITAL & HEART
CENTER, and NEW YORK CARDIOVASCULAR
ANESTHESIOLOGISTS, P.C.,

Defendants.

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The defendants, **BRYAN KAHAN, M.D., FRITZLINE MONTALMANT, M.D. and
NEW YORK CARDIOVASCULAR ANESTHESIOLOGISTS, P.C.**, by their attorneys,
DORF NELSON & ZAUDERER, LLP, answering the complaint of the plaintiffs, upon
information and belief, respectfully shows to this Court and alleges:

ANSWERING THE FIRST CAUSE OF ACTION:

1. Deny the allegations contained in paragraphs “4”, “14”, “27”, “28”, “29”, “31”, “32” and “33.”
2. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “1”, “2”, “3”, “5”, “6”, “7”, “8”, “9”, “11”, “13”, “15”, “16”, “17”, “18”, “19”, “21”, “22”, “24” and “26.”
3. Admit the allegations contained in paragraphs “10”, “12” and “20.”
4. As and for a response to the allegations in paragraphs “30”, “34” and “35,” the defendants deny and refer all questions of law to the trial court.
5. Deny the allegations contained in paragraph “23,” except admit that Dr. Kahan was

an employee of New York Cardiovascular Anesthesiologists, P.C.

6. Deny the allegations contained in paragraph "25," except admit that Dr. Montalmant was a shareholder in New York Cardiovascular Anesthesiologists, P.C.

ANSWERING THE SECOND CAUSE OF ACTION:

7. Answering the subdivision thereof numbered "36", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

8. Deny the allegations contained in paragraphs "37", "38", "39", "40" and "41."

9. As and for a response to the allegations in paragraph "42," the defendants deny and refer all questions of law to the trial court.

ANSWERING THE THIRD CAUSE OF ACTION:

10. Answering the subdivision thereof numbered "43", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

11. Deny the allegations contained in paragraph "46."

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "44" and "45."

13. As and for a response to the allegations in paragraphs "47" and "48," the defendants deny and refer all questions of law to the trial court.

ANSWERING THE FOURTH CAUSE OF ACTION:

14. Answering the subdivision thereof numbered "49", repeats and reiterates each and every denial or admission hereinbefore made with the same force and effect as if again set forth at length herein.

15. As and for a response to the allegations in paragraphs “50”, “51” and “52,” the defendant denies and refer all questions of law to the trial court.

**AS AND FOR A FIRST DEFENSE,
THIS ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

16. That the plaintiff herein was guilty of culpable conduct, including contributory negligence and comparative negligence, which said conduct bars plaintiff's right of recovery in proportion to which the said culpable conduct or negligence attributable to plaintiff bears the culpable conduct or negligence which caused the damages, if any, or the occurrence complained of by plaintiff was caused in whole or in part by the assumption of risk of the plaintiff.

**AS AND FOR A SECOND DEFENSE,
THIS ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

17. The defendants reserve the right to claim the limitations of liability pursuant to the terms of Article 16 of the CPLR.

**AS AND FOR A THIRD DEFENSE,
THIS ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

18. Provisions of C.P.L.R. Article 50-B apply to this action.

**AS AND FOR A FOURTH DEFENSE,
THIS ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

19. The plaintiff's cause of action based upon lack of informed consent is barred by the applicable provision of the Public Health Law section 2805(d).

**AS AND FOR A FIFTH DEFENSE,
THIS ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

20. G.O.L.5-322.1 renders void and unenforceable any claim of contractual indemnification.

WHEREFORE, the defendants, **BRYAN KAHAN, M.D., FRITZLINE MONTALMANT, M.D. and NEW YORK CARDIOVASCULAR ANESTHESIOLOGISTS,**

P.C., demand judgment dismissing the plaintiffs' complaint with the costs and disbursements of this action.

Dated: Rye, New York
April 19, 2024

Yours, etc.,

DORF NELSON & ZAUDERER, LLP

By: *Vincent A. Nagler, Esq.*

Vincent A. Nagler, Esq.

Attorneys for Defendants

BRYAN KAHAN, M.D., FRITZLINE

MONTALMANT, M.D. and NEW YORK

CARDIOVASCULAR

ANESTHESIOLOGISTS, P.C.

555 Theodore Fremd Avenue

Rye, New York 10580

(914) 381-7600

TO: DUFFY & DUFFY, PLLC
Attorneys for Plaintiffs
1370 RR Plaza West Tower, 13th Floor
Uniondale, New York 11556
(516) 394-4200

ATTORNEY'S VERIFICATION

Vincent A. Nagler, Esq. an attorney duly admitted and licensed to practice in the courts of this State affirms the following pursuant to CPLR 2106:

I am the attorney for the defendants, **BRYAN KAHAN, M.D., FRITZLINE MONTALMANT, M.D. and NEW YORK CARDIOVASCULAR ANESTHESIOLOGISTS, P.C.**, herein; and I have read the foregoing answer and know the contents thereof; that the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

That the reason this verification is made by your affirmant and not by the defendant personally is, that the defendant is not within the county where your affirmant has an office.

That the sources of your affirmant's information and the grounds of his/her belief as to the matters so alleged herein are investigations had by the defendant, his/her agents, servants and representatives into the subject matter hereof and correspondence relating thereto, reports of which investigations and copies of which correspondence are in the possession of your affirmant.

Dated: Rye, New York
April 19, 2024

Vincent A. Nagler, Esq.

Vincent A. Nagler, Esq.

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