

**STATE OF NEW MEXICO  
COUNTY OF GRANT  
SIXTH JUDICIAL DISTRICT COURT**

**TIMOTHY YOUNG,**

**Plaintiff,**

**v.**

**No. D-608-CV-2014-00215**

**BRYANT BEESLEY, M.D.,**

**Defendants.**

**PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW**

Plaintiff Timothy Young, by and through counsel, submits this brief in support of his motion for directed verdict pursuant to Rule 1-050 NMRA.

**STANDARDS**

Where a court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for a party, the court may direct a verdict where appropriate. Rule 1-050. A directed verdict is proper when “there are no true issues of fact that a party has the right to have decided by his peers.” Melnick v. State Farm Mut. Auto. Ins. Co., 1988-NMSC-012, ¶ 11, 106 N.M. 726, 749 P.2d 1105. “[T]he question is not whether literally no evidence exists to support the party against whom the motion is made, but whether evidence exists upon which a jury properly could return a verdict for [the opposing] party.” Id. ¶ 12. “The sufficiency of evidence presented to support a legal claim or defense is a question of law for the trial court to decide.” Hicks v. Eller, 2012-NMCA-061, ¶ 16, 280 P.3d 304. Where a defense is legally insufficient, a motion for directed verdict must be granted. Melnick, 1988-NMSC-012, ¶ 13 (granting judgment as a matter of law on a cause of action not recognized in New Mexico).

## ARGUMENT

The doctor-patient relationship “is a fiduciary one.” Demers v. Gerety, 1973-NMCA-134, ¶ 21, 85 N.M. 641, 515 P.2d 645, rev’d on other grounds by Gerety v. Demers, 1974-NMSC-010, 86 N.M. 141, 520 P.2d 869; see Garcia v. Coffman, 1997-NMCA-092, ¶ 26, 124 N.M. 12, 946 P.2d 216. When such a relationship is created, the doctor is required to “exercise the utmost good faith toward the patient throughout the relationship.” Id. This presumes a relationship of “trust and confidence between physician and patient[,]” in which the interests of the patient are regarded above all others. Smith v. Ashby, 1987-NMSC-098, ¶ 5, 106 N.M. 358, 743 P.2d 114; see generally American Medical Association, Code of Medical Ethics (revised Jun. 2001), <https://www.ama-assn.org/sites/default/files/media-browser/principles-of-medical-ethics.pdf> (“[A] physician must recognize responsibility to patients first and foremost[.]”). While the existence of a fiduciary relationship needs not be reduced to writing, it is only established by implication “where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and due regard to the interests of one reposing the confidence.” Swallows v. Laney, 1984-NMSC-112, ¶ 10, 102 N.M. 81, 691 P.2d 874. The assessment of whether such a relation exists “between two parties turns on whether the relationship between the parties is one of trust and confidence.” Branch v. Chamisa Dev. Corp. Ltd., 2009-NMCA-131, ¶ 40, 147 N.M. 397, 223 P.3d 942.

Consent is ordinarily a defense to medical battery in the context of a fiduciary relationship between doctor and patient, Demers, 1973-NMCA-134, ¶ 22; UJI 13-1109A NMRA, but no New Mexico case has held that the standards for a medical battery consent defense apply outside that relationship. Demers, which was the source of the medical battery consent defense, expressly relied on the fact that the alleged battery was committed by a

fiduciary. Id. ¶ 21. The Supreme Court Rules Committee has differentiated between lack of informed consent, medical battery, *and* ordinary battery when it drafted the civil uniform jury instructions. Both the Use Note to UJI 13-1109A and its committee commentary contemplate a claim of medical battery brought by a “patient” against his doctor. But the Committee expressly declined to issue any uniform instruction regarding the ordinary, intentional tort of battery—and any concomitant consent defense—which is apparently viewed differently than a medical battery committed by a doctor who has relayed special confidence to a patient. See UJI 13-1624 NMRA, and its committee commentary.<sup>1</sup>

This case involves a doctor presented with a patient that was undisputedly brought to the hospital by law enforcement officers who sought only to secure the doctor’s assistance in investigating alleged criminal conduct. Apart from the fact that these circumstances establish duress, which obviates consent as a matter of law, see State v. Flores, 1996-NMCA-059, ¶ 20, 122 N.M. 84, 902 P.2d 1038, it is simply impossible, as a logical matter, for Dr. Beesley to serve the interests of law enforcement by conducting their invasive search while simultaneously maintaining a relationship of trust and confidence with his patient, which necessarily requires, at a minimum, both subordinating outside interests (including law enforcement interests) to those of the patient, Smith, 1987-NMSC-098, ¶ 5, and recognizing that the patient has a right to decide whether to subject himself to any particular therapy in an environment free of coercion, see Gerety, 1978-NMSC-097, ¶ 63. The two courses of action are mutually exclusive, and there is no evidence or colorable claim that the predicates to a fiduciary relationship were met in this case.

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<sup>1</sup> Absent any uniform civil battery instruction, and in light of UJI 13-1624, Plaintiff has proposed in his jury instructions that the appropriate standards to apply are those related to the affirmative defense in criminal cases involving consent to a search by law enforcement.

Dr. Beesley should not be entitled to claim the medical consent defense, which exists at law only within the context of a fiduciary relationship that he wholly repudiated by acting at the request of law enforcement officers. If Young was Dr. Beesley's patient, then he should have treated him as one. He should have elevated Young's interests above those of police hailing from a separate county, armed only with a facially deficient warrant. He should have recognized that the circumstances indicated his "patient" was under obvious duress, even if consent was arguably given. Because Dr. Beesley did none of these things, the whole notion of medical consent as a defense in this case is based on a legally deficient theory—unsupported by any evidence—that Dr. Beesley acted in a fiduciary relationship with Young. A reasonable jury cannot conclude that the parties were in a meaningful doctor-patient relationship, and a medical battery consent defense has no application here.

### **CONCLUSION**

For the reasons stated, the Court should grant Young's motion for directed verdict on the issue of consent. Because it is undisputed that Dr. Beesley caused a harmful touching to Young, the Court should decide the battery claim in favor of Young as a matter of law. Rule 1-050(b) NMRA.

Respectfully Submitted,

**KENNEDY KENNEDY & IVES**

/s/ Joseph P. Kennedy

Joseph P. Kennedy

*Attorney for Plaintiff*

1000 2<sup>nd</sup> Street NW

Albuquerque, New Mexico 87102

(505) 244-1400 / F (505) 244-1406

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via the Odyssey E-File and Serve system to all counsel of record on the day of its filing.

*/s/ Joseph P. Kennedy*

Joseph P. Kennedy