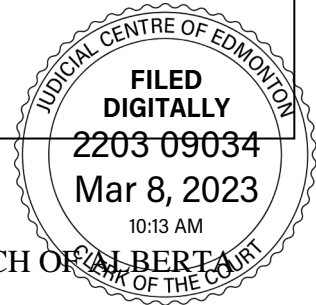


**FORM 11**  
[RULE 3.31]

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JUDICIAL CENTRE

EDMONTON

PLAINTIFF(S)

PEARL GAMBLER

DEFENDANT(S)

MAY SUE MAH and COVENANT HEALTH  
owning and operating the MISERICORDIA  
HOSPITAL

DOCUMENT

**AMENDED STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT

Dr. May Sue Mah

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

BENNETT JONES LLP  
3200 TELUS House, South Tower  
10020 – 100 Street  
Edmonton, AB T5J 0N3

Attention: James J. Heelan, KC  
Telephone No.: (780) 917-4275  
Fax No.: (780) 421-7951  
Client File No.: 000052.11270

AMENDED *E. Wheaton*  
on Mar 8, 2023  
before the close of pleadings

**Statements of facts relied on:**

1. The Defendant Dr. May Sue Mah ("Dr. Mah") is a duly qualified medical practitioner, specializing in obstetrics & gynecology, and is licensed to practice medicine in the Province of Alberta.
2. Except as hereinafter admitted, Dr. Mah denies the allegations contained in paragraphs 1 through 30 inclusive of the Statement of Claim.

3. Dr. Mah concurs with the proposal contained in paragraph 33 of the Statement of Claim.
4. On March 18, 2020, Ms. Gambler was referred to Dr. Mah. An appointment was made for April. However, Ms. Gambler did not attend until May 14, 2020.
5. On May 14, 2020, Ms. Gambler attended at Dr. Mah's clinic for a first prenatal visit at 16 weeks gestation. At this appointment, several antenatal concerns were discussed, including spotting, uterine fibroids, possible complications, and testing for advanced maternal age.
6. Ms. Gambler was referred to the High Risk Maternal-Fetal Medicine Unit for evaluation of her pregnancy due to an abnormal screening for Down Syndrome.
7. On June 3, 2020, a follow up routine and detailed ultrasound demonstrated an 18-week + 3 days live pregnancy, a posterior placenta, several large fibroids, and a closed cervix with cervical length of 3.4 cm.
8. On June 10, 2020, Ms. Gambler called Dr. Mah's office complaining of pelvic pain. Upon attendance with Dr. Mah, Ms. Gambler was not in any distress, the fetal heart rate was positive, there was no tenderness noted on the abdomen, blood pressure was normal, and the cervix was closed. In view of Ms. Gambler's history of multiparity and uterine fibroids, bedrest was recommended by Dr. Mah to see if the pain would improve.
9. On June 11, 2020, Ms. Gambler complained of continued pelvic cramping and was seen by Dr. Mah. Ms. Gambler did not appear to be in significant pain and there were no palpable contractions. Upon pelvic examination, the cervix was becoming a multiparous os. A pap and cultures were taken to rule out infections and Dr. Mah arranged for Ms. Gambler's admission at the Misericordia Hospital on the gynecology ward, where a bed was available.
10. On June 11, 2020 at around 1716 hours, Ms. Gambler attended at the hospital was admitted with admission diagnoses of premature cervical shortening and back pain.
11. On June 11, 2020 at around 2049 hours, Dr. Mah sent Ms. Gambler for an emergency obstetrical ultrasound and was in attendance during same. The ultrasound showed no

retroplacental clots, a shortened cervix to 1.3 cm, and a positive fetal heart rate. Findings were suspicious for cervical incompetence.

12. Dr. Mah discussed the ultrasound findings and expectant treatment with Ms. Gambler. During this discussion, Dr. Mah advised that Ms. Gambler was admitted for bedrest, IV hydration, antibiotics, with a possibility of an emergency cervical cerclage surgery if she settled, and that if she did not settle, there was no possibility of survival due to the extreme under development of the fetus, especially if she continued to labor or rupture her membranes.
13. On June 11, 2020, at around 2105 hours, Dr. Mah was called regarding Ms. Gambler's increasing pelvic pain and spotting. Morphine and Gravol were ordered, but Ms. Gambler refused the morphine overnight. Tylenol was given at 2120 hours.
14. On June 12, 2020, the on-call resident and the on-call attendant OBGYN were called to assess Ms. Gambler's continued cramping and bleeding. These assessments took place around 0730 hours and 0748 hours respectively. Dr. Mah was not involved in these assessments.
15. On June 12, 2020 at around 0820 hours, Ms. Gambler was seen by Dr. Mah and was noted to be very uncomfortable and contracting with pelvic bleeding. Dr. Mah explained that a pelvic examination was necessary in order for Dr. Mah to determine whether emergency cerclage surgery should proceed. Dr. Mah performed a pelvic examination which showed that the cervix was soft, 80% effaced with show, suggesting labor. Ms. Gambler was already having contractions at the time of this pelvic examination. Dr. Mah advised Ms. Gambler that cervical cerclage was not recommended at that time due to her symptoms of bleeding and cramping, and informed Ms. Gambler of the various increased risks of proceeding with surgery at this time.
16. On June 12, 2020 at around 0928 hours, shortly after leaving the unit, Dr. Mah was paged and notified that Ms. Gambler had a spontaneous rupture of membranes and delivered the fetus in a very precipitous labour. Upon Dr. Mah's arrival, the fetus was still alive, but was

not a candidate for life saving measures and had no possibility of survival due to its extreme underdevelopment. Compassionate care was given to both the fetus and Ms. Gambler.

17. On June 12, 2020, following delivery of the fetus, Dr. Mah attempted to deliver Ms. Gambler's placenta. Oxytocin infusion was started to assist with delivery of the placenta. The passing of blood or clots was expected at that time, to separate the placenta from the uterine wall. Dr. Mah assessed Ms. Gambler and attempted to deliver the placenta with gentle traction, but the placenta could not be delivered.
18. Thereafter, Dr. Mah scheduled Ms. Gambler for a manual removal with possible suction dilation and curettage. The risks of surgery were explained to Ms. Gambler and she consented to same. The procedure was done by Dr. Amanda Kim at around 1454. Ms. Gambler was noted to have tolerated the procedure well and was taken to the recovery room in stable condition. Final pathology confirmed evidence of a retroplacental hematoma.
19. Dr. Mah did not attend with Ms. Gambler in the hospital following this procedure. ~~and her discharge.~~
20. On June 15, 2020, Ms. Gambler had a virtual call with Dr. Mah for follow up.
21. On June 29, 2020, Ms. Gambler attended with Dr. Mah in clinic for follow up.
22. Dr. Mah did not attend with Ms. Gambler following this clinic visit.

**Any matters that defeat the claim of the plaintiff:**

23. Dr. Mah states, and the fact is, that Pearl Gambler was at all times made aware of the nature and risks of the procedures performed by Dr. Mah, and Pearl Gambler's consent in all instances was informed.
24. Dr. Mah states that Pearl Gambler had a duty to act reasonably in her own best interest and in the interest of maintaining her own health at all material times. Dr. Mah states that Pearl Gambler failed to fulfill this duty and pleads the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27, as amended. If Pearl Gambler suffered injury, which is not

admitted but specifically denied, that injury was caused or contributed to as a result of her own negligence, the particulars of which shall be proven at the trial of this action.

25. Dr. Mah states that if Pearl Gambler suffered damages as alleged or at all, all of which is not admitted but denied, then such damages were not caused by any negligence, act, omission, breach of duty, or breach of contract on the part of Dr. Mah.
26. Dr. Mah states that if Pearl Gambler has suffered damages as alleged, or at all, which is not admitted, then she failed to mitigate such damages.
27. Dr. Mah denies any negligence on her part and states that the treatment provided to Pearl Gambler was skillful, competent and careful, and within the accepted standard of the practice of obstetrics and gynecology, in Edmonton and elsewhere in Alberta.

**Remedy sought:**

28. Dr. Mah asks that this action be dismissed with costs.

CONSENTED TO this 7th day of March, 2023.

**WEIR BOWEN LLP**

Per:   
\_\_\_\_\_  
**Ms. Shelagh McGregor**  
Counsel for the Plaintiff Pearl Gambler

CONSENTED TO this \_\_\_\_\_ day of March, 2023.

**FIELD LLP**

Per: \_\_\_\_\_  
**Mr. Marc Yu**  
Counsel for the Defendant  
Covenant Health owning and operating  
the Misericordia Hospital

admitted but specifically denied, that injury was caused or contributed to as a result of her own negligence, the particulars of which shall be proven at the trial of this action.

25. Dr. Mah states that if Pearl Gambler suffered damages as alleged or at all, all of which is not admitted but denied, then such damages were not caused by any negligence, act, omission, breach of duty, or breach of contract on the part of Dr. Mah.
26. Dr. Mah states that if Pearl Gambler has suffered damages as alleged, or at all, which is not admitted, then she failed to mitigate such damages.
27. Dr. Mah denies any negligence on her part and states that the treatment provided to Pearl Gambler was skillful, competent and careful, and within the accepted standard of the practice of obstetrics and gynecology, in Edmonton and elsewhere in Alberta.

**Remedy sought:**

28. Dr. Mah asks that this action be dismissed with costs.


CONSENTED TO this \_\_\_\_\_ day of March, 2023.

**WEIR BOWEN LLP**

Per: \_\_\_\_\_  
**Ms. Shelagh McGregor**  
Counsel for the Plaintiff Pearl Gambler

CONSENTED TO this 3rd day of March, 2023.

**FIELD LLP**

Per: \_\_\_\_\_  
  
**Mr. Marc Yu**  
Counsel for the Defendant  
Covenant Health owning and operating  
the Misericordia Hospital