

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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LUIGI NAPOLITANO,

Plaintiff

SUPPLEMENTAL  
VERIFIED BILL OF  
PARTICULARS

ROBERT L. WIGHTON, M.D., SULMAN MAHMOOD,  
D.O., JOSEPH DEMONTE, PCA, MADELINE FILS-  
ALME, R.N., CAROL CURRY, R.N., KARYN  
CARLSON, R.N. and NORTH SHORE UNIVERSITY  
HOSPITAL - NORTHWELL HEALTH

Index No.: 700321/2022

Defendants

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Plaintiff, by his attorneys, **BURNS & HARRIS**, as and for a Supplemental Verified Bill of Particulars, allege(s), upon information and belief:

1. As a result of the defendants' negligence as previously pleaded, plaintiff sustained the following additional injuries:

**PLAINTIFF UNDERWENT THE FOLLOWING PROCEDURE ON  
APRIL 22, 2022**

**Left L4 transpedicular approach to L3/4 far-lateral facetectomy and microdiscectomy and foraminotomies of L3/4 using microsurgical dissection techniques**

**L3/4 LEFT FAR-LATERAL DISK HERNIATION**

**LUMBAR SPINAL STENOSIS**

A copy of the April 22, 2022 operative report is annexed hereto along with an authorization to obtain same from Mt. Sinai Medical Center.

Dated: New York, New York  
July 12, 2022

Yours, etc.

  
\_\_\_\_\_  
MARLA STEIN  
BURNS & HARRIS  
Attorney for Plaintiff(s)  
Luigi Napolitano  
233 Broadway, Suite 900  
New York, New York 10279  
(212) 393-1000  
Our File No. 207081

TO:

Wagner, Doman, Leto, & Di Leo, PC  
Attorney for Defendant(s)  
Robert L. Wighton, M.D., Sulman Mahmood, D.O.,  
Joseph Demonte, PCA, Madeline Fils-Alme, R.N.,  
Carol Curry, R.N., Karyn Carlson, R.N. and  
North Shore Community Hospital - Northwell Health  
227 Mineola Blvd  
Mineola, NY 11501  
(516) 742-1444

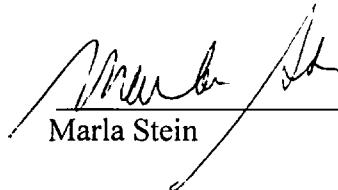
### ATTORNEY'S VERIFICATION

Marla Stein, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at BURNS & HARRIS, attorneys of record for Plaintiff in the action within. I have read the annexed **SUPPLEMENTAL BILL OF PARTICULARS** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Plaintiff is not presently in the county wherein I maintain my offices.

DATED:      New York, New York  
                July 12, 2022



\_\_\_\_\_  
Marla Stein

**Patient:** Luigi Napolitano  
**Provider:** Arthur Jenkins, (Billing)

**DOB:** [REDACTED] 951  
**Visit:** 04/19/2022 7:30AM

**Sex:** M  
**Chart:** NALU000001

**Assessment:**

| Type                | Code   | Description  |
|---------------------|--------|--|
| ICD-10-CM Condition | M47.26 | Other spondylosis with radiculopathy, lumbar region        |
| ICD-10-CM Condition | M54.16 | Radiculopathy, lumbar region                               |
| ICD-10-CM Condition | M51.27 | Other intervertebral disc displacement, lumbosacral region |

**Plan:**

| Type | Code  | Modifiers | Quantity | Description                 |
|------|-------|-----------|----------|-----------------------------|
| CPT  | 63056 |           | 1.00 UN  | DECOMPRESS SPINAL CORD LMNR |
| CPT  | 69990 |           | 1.00 UN  | MICROSURGERY ADD-ON         |

**OP Note MLD:**

Mount Sinai Medical Center  
 Department of Neurosurgery  
 Operative Report - Confidential  
 OR Date: 04/22/2022  
 Medical Record Number: F296456

**Pre-operative Diagnosis:** L3/4 Left far-lateral disk herniation, Left leg pain, Lumbar spinal stenosis

**Procedure:** Left L4 transpedicular approach to a L3/4 far-lateral facetectomy and microdiscectomy and foramenotomies of L3/4 using microsurgical dissection techniques

**Assistant:** Neurosurgery PA

**Anesthesia:** local with sedation

**Position:** Prone, on the Wilson frame of the Jackson Table

**EBL:** 10 cc

**Fluid:** 500 cc crystalloid

**Complications:** None

**Specimen:** Herniated disk, L3/4

**Implants:** fibrin glue

**Patient:** Luigi Napolitano**DOB:** [REDACTED] 1951**Sex:** M**Provider:** Arthur Jenkins, (Billing)**Visit:** 04/19/2022 7:30AM**Chart:** NALU000001

**Indication:** This patient presented with progressive left-sided radiating low back pain that extends down his left posterior leg. He also endorses left leg numbness. MRI Lumbar Spine 7/13/21 demonstrates a large disc herniation at L3/4. The risks, benefits, and alternatives to the proposed procedure were explained to the patient by Dr. Arthur Jenkins in their office, and all questions were answered to their satisfaction.

**Description of Procedure:**

After the patient was brought to the operating room and after adequate lines were placed, the patient positioned himself in the prone position on the Wilson frame of the Jackson Table. Sedation was induced, and the lateral fluoro was brought into the field, and the lateral aspect of the facet joint and the transverse process of L3/4 were identified in AP and lateral fluoro.

The back area was then carefully washed, and then prepped and draped in the usual sterile fashion. A "Time-Out" was performed, and critical steps reviewed. The Incision was infiltrated with Marcaine with epinephrine.

The initial incision was made with a #15 blade. A Bovie tip followed the lamina and facet joint on that side, and the endoscope was placed, but immediately we encountered bleeding that did not stop, even though it was not much in volume, it made visibility poor. We instead then placed a 5.3 mm dilator, and then a 9.4 mm dilator was then placed over the 5.3 mm dilator, and in a subperiosteal fashion, the insertions of the multifidus muscle onto the inferior edge of the lamina of the top level, and the medial aspect of the target facet joint were removed in a blunt fashion. The larger METRx dilators were then used so a 14x4 cm tubular retractor was placed.

This was then secured using the clamp onto the Jackson table with the METRx flexible arm assembly. The fluoro unit was used to demonstrate that this was on an equivalent parallel trajectory into the disk space of L3/4. The remaining multifidus muscle that was directly between the region for the laminotomy and in the viewer's way was bipolarized and removed using a pituitary rongeur. At this point, the region where the lateral foramenotomy would be performed was well-visualized, with ligamentum flavum seen medial to the facet joint, and the inferior edge of the top lamina, superior edge of the lower lamina, and the medial aspect of the facet all within the field.

The remaining multifidus and longissimus muscle that were directly between the region for the foramenotomy and in the viewer's way were bipolarized and removed using a pituitary rongeur. At this point, the region where the lateral aspect of the foramenotomy would be performed was well-visualized, with the L4 transverse process of the lower level, and the superior articular process of L4 arising from this over Kambin's triangle.

At this point, the lateral aspect of the ascending facet of L4 was undercut with a combination of the drill and the 2mm and 3mm Kerrison rongeurs. The inter transverse ligaments was detached from the side of the facet, exposing the radicular artery and the dorsal ramus L3, which led to the nerve root of L3. Once this root was able to be identified, and followed to the pedicle of L3 under the pars of L3, the lateral aspect of the thecal sac

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**Provider: Arthur Jenkins, (Billing)**

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was seen just posterior to the vertebral body of L3.

The L3 root was freed of adherent scar, and retracted laterally to expose the herniated disk fragment underneath. The pedicle of L3 was palpated, and the lateral aspect of the facet joint of L3/4 was identified, which made up the dorsal and caudal margins of the neural foramen. The disk fragment was then removed in a piecemeal fashion, with care to protect the root at L3/4 as well as the lateral aspect of the thecal sac. After extensive removal of the fragment, using up and down curets, pituitary rongeurs, and the right-angled nerve hook, the root and foramen were felt to be free and no longer pressed upon by the disk fragment.

Adequate hemostasis was obtained with the bipolar cautery and bone wax on the bony edges. The wound was irrigated with a liter of antibiotic-containing saline. A thin layer of Evacel fibrin glue was sprayed on the dorsal surface of the dura and nerve root for hemostasis and neural protection. The fascia was closed with 0-Vicryl suture, the subcuticular layer closed with interrupted inverted 3-0 Vicryl suture, and the skin closed with 2 layers of Dermabond and a Tegaderm dressing. The patient was aroused from sedation, and moved to the stretcher.

**Dr. Jenkins, the Attending Surgeon, was scrubbed for the critical portions of the case, including the microdissection for the transpedicular lateral facetectomies of L3/4, and the foramenotomies of L3/4.**

## **Medications & Allergies:**

| Current Medication & Dosage | Dispense | SIG      | PRN? | Indication |
|-----------------------------|----------|----------|------|------------|
| LISINOPRIL TAB 10M          | 90.000   | 1 Tab QD | No   |            |
| ROUVASTATIN TAB 10M         | 90.000   | 1 Tab QD | No   |            |
| METFORMIN TAB 100           | 180.000  | 1 Tab QD | No   |            |
| GLIMEPIRIDE TAB 1MG         | 90.000   | 1 tab QD | No   |            |

| Allergy                        | Reaction |
|--------------------------------|----------|
| No Known Drug Allergies (NKDA) | N/A      |

DURABLE SPECIFIC POWER OF ATTORNEY AUTHORIZING BURNS & HARRIS TO EXECUTE A WRITTEN REQUEST FOR PATIENT INFORMATION TO OBTAIN YOUR MEDICAL RECORDS. THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE SHOULD YOU BECOME DISABLED OR INCOMPETENT.

(CAUTION: This is an important document. It gives the person whom you designate (YOUR "AGENT") broad powers to execute a written request for patient information to obtain your medical records without advance notice to you or approval by you. These powers will continue to exist after you become disabled or incompetent. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you).

THIS is intended to constitute a DURABLE SPECIFIC POWER OF ATTORNEY to execute a written request for patient information to obtain his or her medical records pursuant to Section 18 of the New York Public Health Law. Medical records to be released may include:

- (Indicated by initialing)    X L N Alcohol/Drug Treatment  
                              X L N Mental Health Information  
                              X L N HIV-Related Information

I, Luigi Napolitano, do hereby appoint my attorneys: BURNS & HARRIS, IN MY NAME, PLACE AND STEAD in any way which I myself could do, if I were personally present, with respect to the executing of a written request for patient information to obtain any and all of my medical records to the extent that I am permitted by law to act through an agent.

This durable Power of Attorney shall not be affected by my subsequent disability or incompetence.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

THIS DURABLE SPECIFIC POWER OF ATTORNEY WITH RESPECT TO THE EXECUTING OF A WRITTEN REQUEST FOR PATIENT INFORMATION TO OBTAIN ANY AND ALL OF MY MEDICAL RECORDS MAY BE REVOKED BY ME AT ANY TIME.

In Witness Whereof I have hereunto signed my name this 14 day of JULY, 2021.

Luigi Napolitano

STATE OF NEW YORK COUNTY OF NEW YORK

On the 14 day of JUN, 2021, before me personally came Luigi Napolitano, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same.

Christine Califano  
Notary Public

CHRISTINE CALIFANO  
Notary Public, State of New York  
No. 01CA6119416  
Qualified in Kings County  
Commission Expires November 29, 2024

OCA Official Form No.:960

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

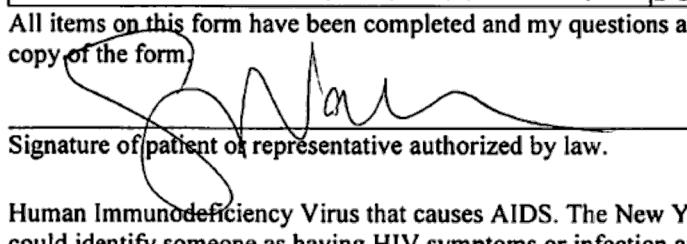
|   |                             |                                      |
|---|-----------------------------|--------------------------------------|
| Patient Name<br><b>Luigi Napolitano</b>   | Date of Birth<br>[REDACTED] | Social Security Number<br>[REDACTED] |
| Patient Address<br><b>15-94 208<sup>th</sup> Street, Queens, New York 11360</b> |                             |                                      |

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV\* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
  2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
  3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
  4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
  5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- 6. THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPEIFIED IN ITEM 9 (b).**

|  |   |
|--|---|
| 7. Name and address of health provider or entity to release this information:<br><b>Mt. Sinai Medical Center, 1 Gustave L. Levy Place New York, NY 10029-6574</b>  |   |
| 8. Name and address of person(s) or category of person to whom this information will be sent:<br><b>Wagner, Doman, Leto &amp; Di Leo, 227 Mineola Blvd., Mineola, NY 11501</b>   |   |
| 9(a). Specific information to be released:<br><input type="checkbox"/> Medical Record from _____ to _____<br><input checked="" type="checkbox"/> Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. |   |
| <input type="checkbox"/> Other:  | Include: (Indicate by Initialing)<br><input checked="" type="checkbox"/> Alcohol/Drug Treatment<br><input checked="" type="checkbox"/> Mental Health Information<br><input checked="" type="checkbox"/> HIV-Related Information |
| <b>Authorization to Discuss Health Information</b><br><input type="checkbox"/> By initialing here _____ I authorize<br>Initials<br>to discuss my health information with my attorney, or a governmental agency, list here:   |   |
| 10. Reason for release of information:<br><input type="checkbox"/> At request of individual<br><input checked="" type="checkbox"/> Other: <b>LITIGATION</b>  | 11. Date or event on which this authorization will expire:<br><b>END OF LITIGATION</b>  |
| 12. If not the patient, name of person signing form:<br><b>SAMANTHA WALTON FOR BURNS &amp; HARRIS</b>  | 13. Authority to sign on behalf of patient:<br><b>POWER OF ATTORNEY (attached)</b>  |

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.



Signature of patient or representative authorized by law.

Date: 7/12/2022

- Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.