

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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PETER NAGLE,

Plaintiff,

VERIFIED BILL  
OF PARTICULARS

-against-

Index No.:  
25064/00

NEW YORK EYE SURGERY CENTER, TLC THE  
LASER CENTER, INC., ANTHONY M. PISACANO,  
M.D., and JEROME H. LEVY, M.D.,

County Clerk

Defendants.

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Plaintiff, by attorneys,

as and for a verified bill of particulars pursuant to the demand of defendant JEROME H. LEVY, M.D. state, upon information and belief, as follows:

1. Objection. Plaintiff is not in control of the full and complete certified medical chart at this time. However, without waiving this objection it is claimed that the dates of treatment were from on or about April 28, 1998 though March 15, 1999.

2. The negligent acts and omissions took place on the premises of offices of this defendant located at 1101 Pelham Parkway, N. Bronx, New York 10469 as well as all other locations this defendant sought to treat the plaintiff PETER NAGLE.

3. Defendant, JEROME H. LEVY, M.D. was negligent in that he: rendered medical care and treatment in deviation from accepted standards of care, and in that the medical care, ophthalmologic care and treatment rendered was rendered carelessly, negligently and unskillfully; in failing to take a proper and adequate history of a lazy eye and keratoconus prior to performing the

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photorefractive Keratectomy (PRK) procedure to the plaintiff PETER NAGLE on or about May 8, 1998 and prior and subsequent thereto wherein the defendant negligently performed the contraindicated procedure of a photorefractive keratectomy to the plaintiff's right eye; in failing to provide ophthalmologic care in conformity with accepted medical standards from April 28, 1998 through March 15, 1999 including an ocular history of a lazy eye and a proper diagnosis of keratoconus which clearly demonstrated that the photorefractive keratectomy (PRK) was contraindicated; in failing to take heed of the signs and symptoms presented by the plaintiff PETER NAGLE of a diagnosis of keratoconus indicating progressive corneal steepening, corneal thinning, induced myopia and an irregular astigmatism; in failing to perform proper and adequate ophthalmologic examinations including pupil measurements using infrared pupillometer under different light conditions, scotopic pupillometry, assessment of dioptric correction, assessment of corneal thickness, appropriate assessment of the planned optical zone, assessment of spherical aberration, assessment of the ablation zone diameter, measurement of the pupils under mesopic conditions, contrast sensitivity, measurement of the size of the entrance of the pupils both in light and dark and the amount of induced refractive change; lensometry, auto refractometry, auto keratometry, manual meratometry, corneal topography, determination of eye dominance, visual acuity with and without correction, manifest and cycloplegic refraction with vertex measurements, stereopsis, intraocular pressure measurements, pachymetry, palpebral fissure measurements, tanometry, slit lamp exam and

dilated fundus exam and videokeratography; in failing to perform an orbscan; in failing to take note and heed of the plaintiff's ablation zone diameter, pupil size and amount of induced refractive change and condition of keratoconus which conclusively illustrated that the procedure was contraindicated for the plaintiff PETER NAGLE; in failing to properly and adequately note and take into account the patient's signs and symptoms of keratoconus, progressive corneal steepening, corneal thinning, induced myopia and an irregular astigmatism as well as large pupils, high myopia, ablation zone diameter, pupil size and amount of induced refractive change;; in negligently employing the photorefractive keratectomy (PRK) laser; in negligently failing to evaluate the diameter of the pupils in dim illumination; in negligently calculating the ablation depth; in negligently performing an ablation and failing to provide an optic zone proportional to the pupil diameters; in negligently failing to perform an indicated ablation without proper assessment of dioptric correction, residual corneal thickness and pupil diameter; in failing to recognize and take note that the plaintiff had disproportionately large pupils compared to the optic zone and therefore the procedure was in every respect contraindicated; in failing to recognize and determine that the plaintiff had keratoconus and therefore a much higher propensity for developing glare, halos, ghost imaging and night glare and the necessity for a corneal transplant; in failing to perform the proper and necessary lab tests and studies; in failing to evaluate properly the findings that had been made as a result of the histories,

examinations, notes of signs and symptoms, lab tests, diagnostic tests, studies and x-rays that had been performed throughout the course of the treatment which would have revealed that the photorefractive keratectomy (PRK) procedure was contraindicated; in failing to inform the plaintiff of his condition of keratoconus, progressive corneal steepening, corneal thinning, induced myopia, large pupils compared to the optic zone to be treated and that he had a higher propensity and likelihood of developing glare, ghost imaging, halos and night glare, decreased visual acuity, vision loss and the associated injuries as indicated herein; in failing and neglecting to order appropriate consultation to assess the plaintiff condition; in failing and neglecting to follow-up on the patient's signs and symptoms, including keratoconus, lazy eye, large pupils, high myopia, ablation zone diameter, pupil size and amount of induced refractive change, after first noticing them; in failing to take those steps that would have been necessary in order to determine that the plaintiff was not a candidate for PRK surgery; in failing to consult with and communicate information to the other defendants during the course of the patient's treatment; in failing to obtain an informed consent from the plaintiff; in failing to make the plaintiff aware of all those perils and dangers which would have allowed him to make an informed consent and would have allowed him to consider any alternate forms of treatment that were available; in failing to make an adequate disclosure in that the patient was not made aware of all those known perils or dangers which would have allowed him to make an

informed consent as well as any alternate forms of treatment that were available; in failing to make the necessary and proper preparations for the PRK surgery; in failing to properly evaluate the patient before surgery; in failing to properly prepare the patient for surgery; in failing to properly evaluate the patient's condition before performing surgery; in failing to properly plan for the PRK surgical procedure; in failing to perform the PRK surgical procedure on the plaintiff in accordance with accepted standards of care; in failing to perform the surgery carefully and skillfully; in failing to employ proper surgical techniques; in failing to observe surgical landmarks; in failing to respond to usual conditions encountered and to respond in accordance with accepted standards of care; in failing to properly supervise the surgical procedure; in failing to advise the patient of non-surgical treatment for his condition; in failing to give the patient proper post-surgical instruction; in failing to warn the patient as to what side effects and complications might occur; in failing to follow-up on the patient after the surgical procedure was performed; in failing to properly observe and monitor the plaintiff after the surgical procedure was performed; in failing to adequately manage and treat the patient in the post-surgical period; in failing to properly observe the patient's signs and symptoms in the post-surgical period; in failing to respond to the signs and symptoms exhibited by the patient; in failing to take proper tests and studies in the post-surgical period; in failing to respond to the results of any tests and studies that were taken post-surgically; in failing to administer appropriate

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

PETER NAGLE,

**FILED**

25064-00

Plaintiff  
NOV - 2 2000  
SUMMONS

against-

NEW YORK EYE SURGERY CENTER, THE LASER  
CENTER INC., ANTHONY M. PISACANO, M.D.,  
and JEROME H. LEVY, MD.,

BRONX COUNTY CLERK'S OFFICE  
Index No. : D

NOV - 2 2000

Defendants.

**BRONX COUNTY CLERK'S OFFICE**

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Plaintiff designates BRONX County as the place of trial. The basis of venue is defendants principal place of business.

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York  
October 27, 2000

Defendant Addresses:

NEW YORK EYE SURGERY CENTER  
1101 Pelham Parkway,  
Bronx, New York 10469

TLC THE LASER CENTER INC.,  
220 Westchester Avenue W.  
White Plains, New York 10604

ANTHONY M. PTSACANO, M.D.  
1101 Pelham Parkway  
Bronx, New York 10469

JEROME H. LEVY, M.D.  
1101 Pelham Parkway  
Bronx, New York 10469

10. a) As a result of the negligence and malpractice of the defendant, the plaintiff has suffered the following injuries which upon information and belief are permanent in nature:

- \*PERMANENT VISION LOSS TO RIGHT EYE
- \*NECESSITY FOR A CORNEAL TRANSPLANT
- \*PERMANENT DISTORTION OF VISION TO RIGHT EYE
- \*PERMANENT NIGHT GLARE TO RIGHT EYE
- \*PERMANENT HALO EFFECT
- \*LOSS OF VISUAL ACUITY TO RIGHT EYE
- \*INABILITY TO DRIVE SAFELY
- \*INABILITY TO OPERATE A BUS FOR THE NEW YORK CITY  
TRANSIT AUTHORITY AND OPERATE A BUS ULTIMATELY  
RESULTING IN THE PLAINTIFF LOSS OF POSITION.
- \*LIMITATION OF CAREER OPPORTUNITIES
- \*HEADACHES
- \*DIMINISHED ABILITY TO READ
- \*DIMINISHED ABILITY TO VIEW MOVIES AND TELEVISION
- \*PAIN
- \*SUFFERING
- \*DEPRESSION, MENTAL ANGUISH
- \* EMOTIONAL DISTRESS