

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

DENIA MALANUM, as Administratrix of the Estate of
Nathaniel Malanum (a/k/a Nathaniel L. Malanum),

Plaintiff,

- against -

NAOMI B. BETESH, D.O., JOSEPH HERRERA, D.O.,
JERRY WEISSMAN, M.D., JOE VONGVORACHOTI,
M.D., JEFFREY FINE, M.D., and NEW YORK CITY
HEALTH & HOSPITALS CORPORATION/ELMHURST
HOSPITAL CENTER,

Defendants.

Index No. 25162-10
Date filed: 10-5-10

Plaintiff designates Queens County
as the place of trial.

The basis of the venue is
defendants' place of business.

SUMMONS

Plaintiff resides at 603 NC Highway
751, Apex North Carolina.

County of Wake

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 plaintiff's attorneys 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: Lake Success, New York
September 28, 2010

STEVEN B. SAMUEL, ESQ., L.L.C.

By: 

Steven B. Samuel, Esq.

Attorney for Plaintiff
1979 Marcus Avenue
Suite 210
Lake Success, NY 11042
(516) 326-2100

Defendants' Address:

NAOMI B. BETESH, D.O.
1526 East Second Street
Brooklyn, NY 11230-6304

JOSEPH HERRERA, D.O.
Mount Sinai Hospital
Department of Rehabilitation Medicine
Five East 98th Street
New York, NY 10029

JERRY WEISSMAN, M.D.
Elmhurst Hospital Center
Department of Rehabilitation
79-01 Broadway
Elmhurst, NY 11373

JOE VONGVORACHOTI, M.D.
Elmhurst Hospital Center
79-01 Broadway
Elmhurst, NY 11373

JEFFREY FINE, M.D.
Elmhurst Hospital Center
Department of Rehabilitation
79-01 Broadway
Elmhurst, NY 11373

**THE NEW YORK CITY HEALTH & HOSPITALS
CORPORATION/ELMHURST HOSPITAL CENTER**
125 Worth Street
New York, NY 10013

ELMHURST HOSPITAL CENTER
79-01 Broadway
Elmhurst, NY 11373

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

DENIA MALANUM, as Administratrix of the Estate of
Nathaniel Malanum (a/k/a Nathaniel L. Malanum), and

Plaintiff,

VERIFIED COMPLAINT

- against -

Index No.

25162-10

NAOMI B. BETESH, D.O., JOSEPH HERRERA, D.O.,
JERRY WEISSMAN, M.D., JOE VONGVORACHOTI,
M.D., JEFFREY FINE, M.D., and NEW YORK CITY
HEALTH & HOSPITALS CORPORATION/ELMHURST
HOSPITAL CENTER,

Defendants.

Plaintiff, by her attorney STEVEN B. SAMUEL, ESQ., L.L.C., complaining of
defendants, alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: At all times herein mentioned plaintiff Denia Malanum was a resident of
Queens County, State of New York, and is presently a resident of the County of Wake, State
of North Carolina.

SECOND: Prior to the commencement of this action, the Surrogate's Court,
Queens County, did duly issue and grant to plaintiff Denia Malanum, Letters of Limited
Administration upon the goods, chattels, and credits of Nathaniel Malanum (a/k/a Nathaniel L.
Malanum), who died a resident of the County of Queens, State of New York, on April 20,
2009; and Denia Malanum has duly qualified as such Administratrix and is duly qualified and
acting and is authorized to maintain this action.

THIRD: That Letters of Limited Administration were duly issued to Denia
Malanum on September 14, 2010.

FOURTH: Prior to April 20, 2009, plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum) resided at 39-40 65th Street, Woodside, New York.

FIFTH: At all times mentioned herein plaintiff Denia Malanum was the lawful wife of plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum).

SIXTH: At all times mentioned herein defendant NEW YORK CITY HEALTH AND HOSPITALS CORPORATION (hereinafter referred to as "NYCHHC") was and is a municipal corporation duly organized and existing under and by virtue of the laws of the City of New York.

SEVENTH: Upon information and belief and at all times hereinafter mentioned, defendant ELMHURST HOSPITAL CENTER (hereinafter referred to as "ELMHURST") was and is a health care institution located in the County of Queens, City and State of New York.

EIGHTH: At all times mentioned herein defendant "NYCHHC" owned, managed, and/or controlled the hospital facility known by the name of Elmhurst Hospital Center located at 79-01 Broadway, Elmhurst, New York.

NINTH: Upon information and belief and at all times herein mentioned, defendant "ELMHURST" held itself out to the public in general and to plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum) as a hospital and health care institution duly qualified and capable of rendering adequate medical care and treatment to the public at large and where competent and skilled medical care were available on a regular and emergency basis and for such purposes hired physicians, interns, nurses, attendants, and other personnel.

TENTH: That from on or about and between November 25 through and on or about and between December 24, 2008, defendant "ELMHURST," its agents, servants,

and/or employees, including defendants Naomi B. Betesh, D.O., Joseph Herrera, D.O., Jeffrey Weissman, M.D., Joe Vongvorachoti, M.D., and Jeffrey Fine, M.D., undertook and rendered certain medical, hospital, nursing, technical, and other health care to plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum).

ELEVENTH: That pursuant to the Order of this Court by Honorable Kevin J. Kerrigan dated May 10 and entered in the Office of the County Clerk on May 24, 2010, a written "Notice of Claim" sworn to by plaintiff Denia Malanum was served on defendants "NYCHHC" and "ELMHURST" on June 18 and 17, 2010, respectively.

TWELFTH: At least 30 days have elapsed since service of the "Notice of Claim;" and defendant "NYCHHC" has failed, neglected, and refused to pay, settle, compromise, or adjust the claim of plaintiff decedent.

THIRTEENTH: In accordance with the notification by the New York City Office of the Comptroller on behalf of defendant "NYCHHC," a hearing was conducted pursuant to General Municipal Law § 50(h) at the office of the attorneys for defendant "NYCHHC" on August 18, 2010.

FOURTEENTH: Plaintiff has complied with all of the conditions precedent to the commencement of this action by way of statutory compliance.

FIFTEENTH: At all times mentioned herein defendant NAOMI B. BETESH, D.O., was and still is a physician duly licensed to practice medicine in the State of New York.

SIXTEENTH: Upon information and belief and at all times herein mentioned, defendant Naomi B. Betesh, D.O., was and still is a resident of the State of New York.

SEVENTEENTH: At all times mentioned herein defendant Naomi B. Betesh, D.O., held herself out as a competent and able physician qualified to treat patients and to render medical care and treatment.

EIGHTEENTH: At all times mentioned herein defendant JOSEPH HERRERA, D.O., was and still is a physician duly licensed to practice medicine in the State of New York.

NINETEENTH: Upon information and belief and at all times herein mentioned, defendant Joseph Herrera, D.O., was and still is a resident of the State of New York.

TWENTIETH: At all times mentioned herein defendant Joseph Herrera, D.O., held himself out as a competent and able physician qualified to treat patients and to render medical care and treatment.

TWENTY-FIRST: At all times mentioned herein defendant JEFFREY WEISSMAN, M.D., was and still is a physician duly licensed to practice medicine in the State of New York.

TWENTY-SECOND: Upon information and belief and at all times herein mentioned, defendant Jeffrey Weissman, M.D., was and still is a resident of the State of New York.

TWENTY-THIRD: At all times mentioned herein defendant Jeffrey Weissman, M.D., held himself out as a competent and able physician qualified to treat patients and to render medical care and treatment.

TWENTY-FOURTH: At all times mentioned herein defendant JOE VONGVORACHOTI, M.D., was and still is a physician duly licensed to practice medicine in the State of New York.

TWENTY-FIFTH: Upon information and belief and at all times herein mentioned, defendant Joe Vongvorachoti, M.D., was and still is a resident of the State of New York.

TWENTY-SIXTH: At all times mentioned herein defendant Joe Vongvorachoti, M.D., held himself out as a competent and able physician qualified to treat patients and to render medical care and treatment.

TWENTY-SEVENTH: At all times mentioned herein defendant JEFFREY FINE, M.D., was and still is a physician duly licensed to practice medicine in the State of New York.

TWENTY-EIGHTH: Upon information and belief and at all times herein mentioned, defendant Jeffrey Fine, M.D., was and still is a resident of the State of New York.

TWENTY-NINTH: At all times mentioned herein, defendant Jeffrey Fine, M.D., held himself out as a competent and able physician qualified to treat patients and to render medical care and treatment.

THIRTIETH: At all times mentioned herein defendant Naomi B. Betesh, D.O., was an agent and/or servant of the defendant "ELMURST."

THIRTY-FIRST: At all times mentioned herein defendant Naomi B. Betesh, D.O., was an employee of the defendant "ELMHURST."

THIRTY-SECOND: At all times mentioned herein defendant Joseph Herrera, D.O., was an agent and/or servant of the defendant "ELMHURST."

THIRTY-THIRD: At all times mentioned herein defendant Joseph Herrera, D.O., was an employee of the defendant "ELMHURST."

THIRTY-FOURTH: At all times mentioned herein defendant Jeffrey Weissman, M.D., was an agent and/or servant of the defendant "ELMHURST."

THIRTY-FIFTH: At all times mentioned herein defendant Jeffrey Weissman, M.D., was an employee of the defendant "ELMHURST."

THIRTY-SIXTH: At all times mentioned herein defendant Joe Vongvorachoti, M.D., was an agent and/or servant of the defendant "ELMHURST."

THIRTY-SEVENTH: At all times herein mentioned defendant Joe Vongvorachoti, M.D., was an employee of the defendant "ELMHURST."

THIRTY-EIGHTH: At all times herein mentioned defendant Jeffrey Fine, M.D., was an agent and/or servant of the defendant "ELMHURST."

THIRTY-NINTH: At all times herein mentioned defendant Jeffrey Fine, M.D., was an employee of the defendant "ELMHURST."

FORTIETH: At all times herein mentioned the aforesaid medical, technical, and other health care was rendered by defendants in a negligent and careless manner and deviated from accepted standards of care.

FORTY-FIRST: At all times herein mentioned defendants, their agents, servants and/or employees, were negligent in the services rendered for and on behalf of plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum) in failing to properly supervise the residents caring for plaintiff decedent; in failing to comply with ACGME rules; in failing to properly supervise and insure proper coverage for patients at the rehabilitation facility; in failing to have attending physicians see the patients in the rehabilitation facility at appropriate intervals; in failing to have adequate attending physicians to evaluate the patients in the rehabilitation facility; in failing and neglecting to use reasonable care in the services rendered; in neglecting to heed plaintiff decedent's condition; in negligently departing from accepted standards of practice; in failing to follow good practice; in failing to properly supervise and monitor plaintiff decedent; and in other ways were negligent and careless in the care and treatment of Nathaniel Malanum (a/k/a Nathaniel L. Malanum).

FORTY-SECOND: That defendants had actual knowledge of facts concerning their patient's condition which would have required a reasonable provider of medical services to closely monitor their patient's condition; to take necessary action to avoid harm to plaintiff decedent; to be cognizant of signs, symptoms, and complaints exhibited and made by their patient; to perform further necessary diagnostic studies; to be cognizant of the results of diagnostic studies which were performed and institute prompt and aggressive treatment. The negligence by defendants evinced reckless indifference to human life in that they failed to have adequate staffing; failed to have attending physicians appropriately monitor plaintiff decedent's condition; failed to follow orders when the severity of plaintiff decedent's condition became known to them; and knowingly kept in place a flawed system which prevented seriously ill patients from receiving the monitoring and care that they required.

FORTY-THIRD: That with full knowledge of the foregoing serious conditions and history defendants failed to document and/or follow plaintiff decedent's condition and plan of care.

FORTY-FOURTH: That the foregoing acts and omissions of defendants constituted a reckless indifference to a patient entrusted to defendants' care, resulting in extreme pain and suffering, extreme emotional distress, and death.

FORTY-FIFTH: That solely by reason of the foregoing wrongful, negligent, and careless acts of defendants, their agents, servants, and/or employees, plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum) suffered serious injuries, experienced pain and suffering, experienced the loss of enjoyment of life, and suffered mental anguish. As a result of said negligence, his death was caused on April 20, 2009; and he and his Estate were in other ways injured and damaged.

FORTY-SIXTH: This action falls within one or more of the exceptions of Article 16 of the Civil Practice Law and Rules.

FORTY-SEVENTH: That by reason of the foregoing plaintiff decedent's Estate is entitled to punitive damages in an amount to be determined by a jury.

FORTY-EIGHTH: As a result of the foregoing, plaintiff and the Estate she represents have been damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION

FORTY-NINTH: Plaintiff repeats, reiterates, and realleges each and every allegation set forth in Paragraphs "FIRST" through "FORTY-SEVENTH" with the same force and effect as if more fully set forth herein at length.

FIFTIETH: That on April 20, 2009, plaintiff decedent Nathaniel Malanum (a/k/a Nathaniel L. Malanum) did expire as a result of the medical malpractice and negligence of the defendants, their agents, servants, and/or employees.

FIFTY-FIRST: Plaintiff decedent is survived by next of kin and distributees.

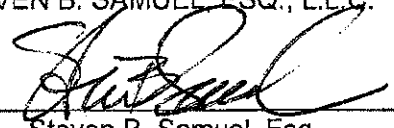
FIFTY-SECOND: As a result of the wrongful death, decedent's Estate became liable for and expended money for funeral costs and other expenses.

FIFTY-THIRD: As a result of the foregoing wrongful death, decedent's Estate suffered pecuniary loss.

WHEREFORE, plaintiff demands judgment against defendants on the First and Second Causes of Action of the complaint for an amount in excess of the jurisdictional limits

of all lower courts, together with such punitive damages as a jury may award, with costs, interest, and disbursements.

STEVEN B. SAMUEL ESQ., L.L.C.

By: 
Steven B. Samuel, Esq.

Attorneys for Plaintiff
1979 Marcus Avenue
Suite 210
Lake Success, NY 11042

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NASSAU)ss:

STEVEN B. SAMUEL, an attorney duly admitted to practice law in the courts of the State of New York, affirms the following:

That I am a member of the firm of Steven B. Samuel, Esq., L.L.C., attorney for plaintiff in the within action.

I have read the foregoing SUMMONS and VERIFIED COMPLAINT and know the contents. The same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief. As to those matters I believe it to be true.

The reason this verification is made by me and not by plaintiff is that your affirmant maintains his office in a county other than where plaintiff resides.

I affirm that the foregoing statements are true under penalty of perjury.

Duly affirmed: Lake Success, New York
September 28, 2010



STEVEN B. SAMUEL

CERTIFICATE OF MERIT FOR
MEDICAL MALPRACTICE PURSUANT TO
CIVIL PRACTICE LAW AND RULES § 3012-a

STEVEN B. SAMUEL, an attorney duly admitted to practice law in the courts of the State of New York, affirms the following under penalty of perjury:

That I have reviewed the facts of this case and have consulted with at least one physician who is licensed to practice in this State or in any other state and who I reasonably believe is knowledgeable with the relevant issues involved in this action. I have concluded on the basis of my review and consultation that a reasonable basis exists for the commencement of this action.

Duly affirmed: Lake Success, New York
September 28, 2010



STEVEN B. SAMUEL

SUPREME COURT, QUEENS COUNTY

DENIA MALANUM, as Administratrix of the Estate of
Nathaniel Malanum (a/k/a Nathaniel L. Malanum),

Plaintiff,

- against -

NAOMI B. BETESH, D.O., JOSEPH HERRERA, D.O.,
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M.D., JEFFREY FINE, M.D., and NEW YORK CITY
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HOSPITAL CENTER,

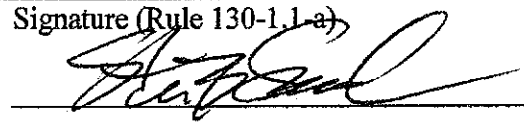
Defendants.

**SUMMONS
and
VERIFIED COMPLAINT**

STEVEN B. SAMUEL, ESQ., L.L.C.
Attorney for the Petitioner
Office and Post Office Address, Telephone
1979 Marcus Avenue
Suite 210
Lake Success, New York 11042
(516) 326-2100
Fax (516) 326-2365

To

Signature (Rule 130-1.1-a)



Attorneys for

Service of a copy of the within
Total: \$210.00
Check \$210.00
Other \$210.00
T. 1941564
DENIA MALANUM, DENIA MALANUM, DENIA MALANUM
ADMX 25162/2010

Is hereby admitted.

Queens County Clerk's Office
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