

Chopitea v Cammisa

2026 NY Slip Op 31920(U)

May 1, 2026

Supreme Court, New York County

Docket Number: Index No. 805092/2025

Judge: Kathy J. King

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

-----X

ANTONIO PALACIOS CHOPITEA,

Plaintiff,

- v -

FRANK CAMMISA, and HOSPITAL FOR SPECIAL SURGERY,

Defendants.

-----X

INDEX NO. 805092/2025

MOTION DATE 11/21/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for STRIKE PLEADINGS

Upon the foregoing documents, Defendants HOSPITAL FOR SPECIAL SURGERY ("HSS") and FRANK CAMMISA, M.D. ("Dr. Cammisa") (collectively "moving Defendants"), move for an Order, pursuant to CPLR 3042(c) and CPLR 3042(d), striking Items 1, 2, and 3, of Plaintiffs' Verified Bills of Particulars as to the moving Defendants and directing Plaintiffs to serve Amended Bills of Particulars ("VBP") as to those Items within ten (10) days of the date of issuance of the Order to be issued herein and, upon Plaintiffs' failure to comply, precluding Plaintiffs from offering any evidence or testimony at trial as to any claimed malpractice or damages.

Plaintiff opposes Defendants' motion.

BACKGROUND

This action arises out of defendants' treatment of Plaintiff from or about January 11, 2023, through January 26, 2024, allegedly resulting in injuries. On January 11, 2023, then 67-year-old male, Plaintiff, with a history of f hypertension, gout, myelodysplastic syndrome, and chronic kidney disease, and prior lumbar spine surgeries, presented to Defendants for chronic lower back

ache. On January 18, 2023, Plaintiff was admitted to HSS, where he was evaluated and treated by Defendant Dr. Cammisa, and a surgery was performed. Plaintiff was discharged on January 29, 2023. On February 7, 2023, Plaintiff returned to Defendants for a follow up visit three-weeks post-operation, where a radiological study was performed, and, subsequently, Dr. Cammisa planned for revision surgery. On February 11, 2023, Plaintiff was discharged after the revision surgery and remained as an outpatient to HSS until February 22, 2023.

As set forth in Plaintiff's Bill of Particular, the specific allegations of malpractice include causing Iatrogenic surgical site infection with spinal empyema and osteomyelitis in the post-operative management of thoracolumbar spinal surgery.

The instant action commenced with the filing of a Summons and Complaint on April 1, 2025. Defendants joined issue by filing Answers on May 12, 2025, and now move for an Order, pursuant to CPLR 3042(c) and CPLR 3042(d).

PLAINTIFF'S VBP

Both of Plaintiffs' Bills of Particulars raise the following allegation:

Item 1: "Defendant, [HSS] . . . [failed] to properly treat and perform plaintiff's surgery; failed to take and/or obtain a proper history; failed to treat plaintiff, ANTONIO PALACIOS CHOPITEA in a skilled and proper manner; failed to take or order adequate and proper tests to determine the nature and extent of the ailments and conditions from which ANTONIO PALACIOS CHOPITEA was suffering at the time during which treatment was rendered; failed to order or take the proper examinations and procedures to determine the nature and extent of the ailments and conditions from which plaintiff was suffering at the time during which treatment was rendered including post-operatively; failed to render the proper treatment to plaintiff for the conditions and ailments from which he was suffering; failed to possess and use that degree of diligence and skill

ordinarily possessed by, and required of medical doctors in the community at the time the treatment was rendered; failed to use reasonable skill, care, and diligence in the exercise of professional knowledge to accomplish the purpose for which defendants were retained; failed to take any and/or effective and adequate measures or means to prevent further harm and injury to plaintiff; failed to properly follow up; failed to take proper and reasonable precautions for the health and safety of ANTONIO PALACIOS CHOPITEA; failed to diagnose and treat the effects thereof from which plaintiff was suffering post-operatively... prescribed and administered improper treatment and advice; failed to take a proper history; failed to call in proper consultants; failed to recognize and treat the onset of complications.”

Item 2: “*See*, paragraph 1. Defendant, [HSS], . . . ignored signs, symptoms, complaints, and/or past history including but not limited to swelling and bulge at the surgical site, pain, and loss of mobility. Plaintiff reported the aforesaid signs, symptoms, and complaints to Defendant by sending several messages and photos, but Defendant failed to adequately address the same.”

Item 3: “*See*, paragraph 1. The accepted medical practices, customs, and standards that were violated and/or departed from by Defendant, [HSS], . . . include taking appropriate measures to prevent surgical site infection; ensuring follow-up and monitoring after surgical intervention; diagnosing postoperative infection in a timely manner; and treating postoperative infection in a timely manner.”

DISCUSSION

The purpose of a bill of particulars is to amplify the pleadings, limit the proof and prevent surprise at trial (*Miccarelli v Fleiss*, 219 AD2d 469, 470 [1st Dept 1995]; *Jurado v Kalache*, 93 AD3d 759, 760 [2d Dept 2012]). Even if a complaint is clear as to the causes of action being litigated in a particular matter, defendants are entitled to particulars that deal with the specific

medical standards in issue and the alleged deviations therefrom, since the VBP's function is to particularize the elements central to the trial and narrow the issue for litigation (*see Hawkes v Mount Sinai Hosp.*, 75 AD2d 509 [1st Dept 1980]). Thus, a VBP need not set forth, in evidentiary detail, the allegations in prior pleadings; rather, its purpose is to amplify the pleadings, and prevent surprise at trial (*Miccareli*, 219 AD2d at 470; *Kalache*, 93 AD3d at 760).

In its discretion, the Court may prune demands that exceed the functional requirements of a VBP and are overly broad in scope (*Id.*). "A response to a demand that is vague, non-specific and open ended fails to satisfy the purpose of a bill of particulars..." (*Alvarado v New York City Hous. Auth.*, 302 AD2d 264 [1st Dept 2003]).

Defendants contend that the language contained in items 1-3 in Plaintiff's VBP contains open-ended language that does not amplify the Complaint or prevent surprise at trial, and instead, may allow Plaintiffs to improperly present new claims at trial. Defendants further contend that Plaintiff will not be prejudiced in any way by the grant of the relief sought herein. By contrast: Defendants will be prejudiced by denial of the relief sought herein.

In opposition, Plaintiff argues that items 1-3 in the VBP fulfils its purpose in that it identifies the categories of departures alleged, the phase of treatment involved, and the nature of plaintiff's injuries and post-operative complications. Specifically, and pertaining to item 1, Plaintiff argues that its language sufficiently amplifies the pleadings by identifying the categories of departures, phases of treatment, and nature of injuries to prevent surprise at trial. Regarding item 2, Plaintiff states that the response is proper because it details specific postoperative symptoms reported by the plaintiff, such as swelling and pain, while using standard language to account for further developments during discovery. As it relates to item 3, Plaintiff asserts that the response provides clear notice of the claims by listing concrete medical standards allegedly

violated, specifically regarding the diagnosis and treatment of postoperative infections. Lastly, Plaintiff emphasizes that the motion to strike is premature because New York law favors full disclosure, and depositions, which have not yet occurred, before seeking court intervention.

The Court finds that the factual record must continue to be developed before Plaintiff's claims are restricted (*see Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Forman v Henkin*, 30 NY3d 656 [2018]; *see also Robinson v Dinneen*, 203 AD3d 555, 556 [1st Dept 2022]; *Sagarese v City of New York*, 173 A.D.3d 435 [1st Dept 2019]).

Accordingly, it is hereby

ORDERED that Defendant's motion is denied without prejudice to renew upon the completion of discovery; and it is further

ORDERED that Plaintiff is to serve a copy of this order upon Defendants with Notice of Entry within fourteen (14) days of the date of this Order.

This constitutes the Decision and Order of the Court.

5/1/2026
DATE

Kathy J. King
KATHY J. KING, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT