

01-1025-CD  
RACHEL TRAVENY -vs- PRAXIDIO H. TAGALA, M.D. et al

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-C

**PRAECIPE FOR WRIT OF SUMMONS**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

JUN 27 2001

**William A. Shaw**  
**Prothonotary**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No.

vs.

Code: 007

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PRAECIPE FOR WRIT OF SUMMONS**

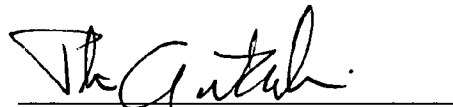
TO: PROTHONOTARY

Please issue a Writ of Summons against the defendants in the captioned matter.

The amount in controversy is in excess of the arbitration limits.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES



Philip A. Fabiano  
Attorney for Plaintiffs

310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

FILED  
m111-54862  
Atty pd.  
80.00  
3cc Sheriff  
A. Shaw  
every 3 credits to Sheriff

COPY

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY PENNSYLVANIA  
CIVIL ACTION

SUMMONS

**Rachel Traveny**

**Vs.**

**NO.: 2001-01025-CD**

**Praxidio H. Tagala MD  
Roberto Luna MD  
Clearfield Hospital**

TO: PRAXIDIO H. TAGALA MD  
ROBERTO LUNA MD  
CLEARFIELD HOSPITAL

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 06/27/2001

---

William A. Shaw  
Prothonotary

Issuing Attorney: Philip A. Fabiano, Esq.  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 11167

TRAVENY, RACHEL

01-1025-CD

VS.

TAGALA, PRAXIDIO H. , MD. AI

PRAECIPE & SUMMONS

**SHERIFF RETURNS**

---

NOW JULY 02, 2001 AT 9:22 AM DST SERVED THE WITHIN PRAECIPE & SUMMONS  
ON ROBERTO LUNA, M.D., DEFENDANT AT RESIDENCE, 10 N.W. 4TH, CLEARFIELD  
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERTO LUNA, M.D.  
A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND  
MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET

NOW JULY 02, 2001 AT 9:32 AM DST SERVED THE WITHIN PRAECIPE & SUMMONS  
ON CLEARFIELD HOSPITAL, DEFENDANT AT EMPLOYMENT, 809 TURNPIKE AVE.,  
CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SHARON  
HAY, EXECUTIVE ASSISTANT, A TRUE AND ATTESTED COPY OF THE ORIGINAL  
PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.  
SERVED BY: COUDRIET

NOW JULY 02, 2001 AT 11:11 AM DST SERVED THE WITHIN PRAECIPE & SUMMONS  
ON PRAXIDIO H. TAGALA, M.D., DEFENDANT AT EMPLOYMENT, 615 THOMPSON ST.  
CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
PRAXIDIO TAGALA, M.D. A TRUE AND ATTESTED COPY OF THE ORIGINAL  
PRAECIPE & SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: MCCLEARY/COUDRIET

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**Return Costs**

Cost	Description
32.34	SHFF. HAWKINS PAID BY: ATTY.
30.00	SURCHARGE PAID BY: ATTY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11167

TRAVENY, RACHEL

01-1025-CD

VS.

TAGALA, PRAXIDIO H., MD. AI

PRAECIPE & SUMMONS

SHERIFF RETURNS

Sworn to Before Me This

6th Day Of July 2001  
*William A. Shaw*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.

So Answers,

*Chester A. Hawkins*  
*by Mandy Harris*  
Chester A. Hawkins  
Sheriff

FILED

JUL 06 2001  
10:32:41 pm  
*William A. Shaw*  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

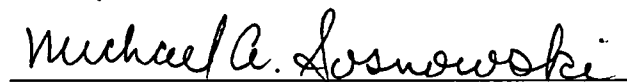
01 – 1025 – CD

**ISSUE: PRAECIPE FOR ENTRY  
OF APPEARANCE**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 – FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 12TH DAY OF JULY, 2001.

  
Attorneys for Named Defendant

**FILED**

JUL 13 2001

**William A. Shaw**  
Prothonotary



RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

01 – 1025 – CD

**JURY TRIAL DEMANDED**

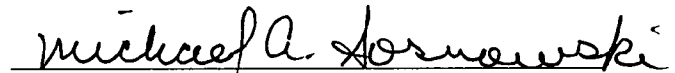
**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY

Kindly enter my appearance as counsel of record for the Defendant,

**CLEARFIELD HOSPITAL**, in the above-captioned action.

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT



Attorneys for Defendant,  
CLEARFIELD HOSPITAL  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9399 – FAX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
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)  
) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading:  
) PRAECIPE FOR RULE TO FILE A  
) COMPLAINT  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
)  
) Court I.D. No.: 06787  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 7/11/01

**FILED**

JUL 12 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,

ROBERTO LUNA, M.D. and

CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED


NO. 01-1025 CD

PRAECIPE FOR RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please issue a Rule on Plaintiff to file her Complaint within twenty (20) days from  
service thereof or suffer a judgment of non pros against them.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant,  
Roberto Luna, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 7/11/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED


NO. 01-1025 CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Praeceptum for Rule to File a Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11<sup>th</sup> day of July, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219 and Walter F. Wall, 120 Lakemont Park Boulevard, Altoona, PA 16602.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:

  
JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.

FILED

MAR 12 2001

William A. Shaw  
Prothonotary

Rule to

City Block

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants.

JURY TRIAL DEMANDED

NO. 01-1025 CD

RULE

TO: RACHEL TRAVENY  
c/o Philip A. Fabiano, Esquire  
310 Grant Street  
Suite 310, Grant Building  
Pittsburgh, PA 15219

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within  
twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

\_\_\_\_\_  
PROTHONOTARY

Dated: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
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) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading:  
) PRAECIPE FOR ENTRY OF  
) APPEARANCE  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
)  
) Court I.D. No.: 06787  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 7/11/01

**FILED**  
JUL 12 2001  
m B. O'Indre  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,

ROBERTO LUNA, M.D. and

CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED

NO. 01-1025 CD

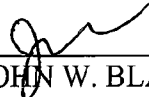
PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, ROBERTO LUNA, M.D., in the  
above matter.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:

  
JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated: 7/11/01



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED

NO. 01-1025 CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Praeceptum for Entry of Appearance, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11<sup>th</sup> day of July, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219 and Walter F. Wall, 120 Lakemont Park Boulevard, Altoona, PA 16602.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

01 – 1025 – CD

**ISSUE: PRAECIPE FOR ISSUANCE  
OF RULE TO FILE COMPLAINT**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 – FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 12TH DAY OF **JULY, 2001**.

Michael A. Sosnowski

Attorneys for Named Defendant

**FILED**

JUL 13 2001

William A. Shaw  
Prothonotary

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

01 – 1025 – CD

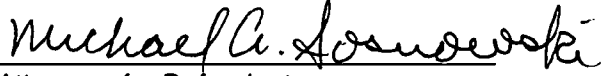
**JURY TRIAL DEMANDED**

**PRAECIPE FOR ISSUANCE OF RULE TO FILE COMPLAINT**

TO: PROTHONOTARY

Please enter a Rule upon the plaintiff, RACHEL TRAVENY to file a Complaint  
in the above-captioned action within twenty (20) days of the date of service of said Rule.

PFAFF, McINTYRE, DUGAS & HARTYE



Attorneys for Defendant  
CLEARFIELD HOSPITAL

**MICHAEL A. SOSNOWSKI, ESQUIRE**

**PA ID# 67207**

P.O. Box 533

Hollidaysburg, PA 16648

(814) 696-3581

(814) 696-9399 – FAX

**RULE TO FILE COMPLAINT**

AND NOW, this 13<sup>th</sup> day of July, 2001, Rule is entered on the plaintiffs to  
file a Complaint as above.



Prothonotary

**FILED**

JUL 13 2001  
MILLER/Kuleto  
William A. Shaw  
Prothonotary

City  
Scraper

*[Handwritten signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
)  
)  
) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading: CERTIFICATE OF  
) SERVICE AND RULE TO FILE A  
) COMPLAINT  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
)  
)  
) Court I.D. No.: 06787  
)  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 7/13/01

**FILED**

JUL 16 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,

ROBERTO LUNA, M.D. and

CLEARFIELD HOSPITAL,

Defendants.

JURY TRIAL DEMANDED

NO. 01-1025 CD

RULE

TO: RACHEL TRAVENY  
c/o Philip A. Fabiano, Esquire  
310 Grant Street  
Suite 310, Grant Building  
Pittsburgh, PA 15219

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within  
twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

  
PROTHONOTARY

Dated: 7/12/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,

ROBERTO LUNA, M.D. and

CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED

NO. 01-1025 CD

CERTIFICATE OF SERVICE

I hereby certify that the original Rule to File a Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 13<sup>th</sup> day of July, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219 and true and correct copy of same to Walter F. Wall, 120 Lakemont Park Boulevard, Altoona, PA 16602.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

No. 01-1025-CD


**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter the appearance of Walter Fredrick Wall, Esquire of MEYER,  
DARRAGH, BUCKLER, BEBENEK & ECK, PLLC on behalf of the Defendant, PRAXIDIO  
H. TAGALA, M.D. in the above-captioned matter.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

  
WALTER FREDRICK WALL, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona PA 16602

DATED: 7/13/01

**FILED**

JUL 16 2001

William A. Shaw  
Prothonotary



FILED

11 16 2001  
m193122cc  
William A. Shaw  
Prothonotary  
KBT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.


01 – 1025 – CD

**ISSUE: CERTIFICATE OF SERVICE  
OF RULE TO FILE COMPLAINT**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 – FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 17<sup>th</sup> DAY OF **JULY, 2001.**

  
Attorneys for Named Defendant

**FILED**

JUL 18 2001

William A. Shaw  
Prothonotary

RACHEL TRAVENY,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PA
Plaintiff,	:	
	:	
vs.	:	01 – 1025 – CD
	:	
PRAXIDIO H. TAGALA, MD., ROBERTO	:	
LUNA, M.D. and CLEARFIELD HOSPITAL,	:	
	:	
Defendants.	:	<b>JURY TRIAL DEMANDED</b>

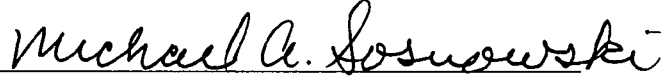
**CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT**

TO: PROTHONOTARY

You are hereby notified that on the 17<sup>th</sup> day of **July, 2001**, Defendant, CLEARFIELD HOSPITAL, served a RULE upon the Plaintiff, by mailing the original of same via First Class Mail, postage prepaid, addressed to the plaintiff's counsel:

Philip A. Fabiano, Esquire  
Howard Messer & Associates  
310 Grant Street  
Suite 530 Grant Building  
Pittsburgh, PA 15219-2301

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT,

  
Attorneys for Defendant,  
CLEARFIELD HOSPITAL  
**Michael A. Sosnowski, Esquire**  
**PA I.D. #67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9399 – FAX

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

01 – 1025 – CD

**JURY TRIAL DEMANDED**

**PRAECIPE FOR ISSUANCE OF RULE TO FILE COMPLAINT**

TO: PROTHONOTARY

Please enter a Rule upon the plaintiff, RACHEL TRAVENY to file a Complaint  
in the above-captioned action within twenty (20) days of the date of service of said Rule.

PFAFF, McINTYRE, DUGAS & HARTYE

*Michael A. Sosnowski*

Attorneys for Defendant  
CLEARFIELD HOSPITAL

**MICHAEL A. SOSNOWSKI, ESQUIRE**

**PA ID# 67207**

P.O. Box 533

Hollidaysburg, PA 16648

(814) 696-3581

(814) 696-9399 – FAX

**RULE TO FILE COMPLAINT**

AND NOW, this 13th day of July, 2001, Rule is entered on the plaintiffs to  
file a Complaint as above.

*William L. L...*

Prothonotary

**FILED**

JUL 18 2001  
MILLER  
William A. Shaw  
Prothonotary

NOTED  
JUL 18 2001  
JUL 18 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D., ROBERTO  
LUNA, M.D., and CLEARFIELD  
HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

Code No.

**PRAECIPE FOR RULE TO FILE  
COMPLAINT**

Filed on Behalf of Defendant, Praxidio H.  
Tagala, M.D.

Counsel of Record for this Party:

Walter Fredrick Wall, ESQUIRE  
PA. I.D. #23657

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.

Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

JUL 19 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

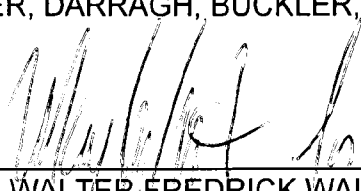
**PRAECIPE FOR RULE TO FILE COMPLAINT**

TO THE PROTHONOTARY:

Please enter a Rule upon the Plaintiff, Rachel Traveny, to file a Complaint in the  
above-captioned matter within twenty (20) days of the date of service of said Rule.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

 62175  
\_\_\_\_\_  
WALTER FREDRICK WALL, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
P.A. ID 23657

DATED: July 18, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

**RULE**

AND NOW, this 19th day of July, 2001, upon consideration of the foregoing Praecipe and on Motion of Walter Fredrick Wall, Esquire, Counsel for the Defendant, Praxidio H. Tagala, M.D., a Rule is granted on the Plaintiff to file her Complaint Sec. Leg within twenty (20) days of service of said Rule, or Judgment of Non Pros may be entered.



Prothonotary



FILED

JUL 19 2001

*MD-376* Rule to  
William A. Shaw  
Prothonotary

*att'y work*  
*Enoc*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

**CERTIFICATE OF SERVICE**

I, WALTER FREDRICK WALL, ESQUIRE, of the Law Firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, on behalf of Defendant, James E. Richey, M.D. hereby certify that on the **20<sup>th</sup> day of July, 2001**, a true and correct copy of the Rule to file a Complaint was served upon Parties of record and/or Counsel by U.S. Mail, postage prepaid, addressed as follows:

Howard F. Messer, Esquire  
Suite 1404  
Grant Building  
Pittsburgh, PA 15219

John W. Blasko, Esquire  
MCQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801

Michael A. Sosnowski, Esquire  
PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

  
MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
P.A. ID 62175

**FILED**

JUL 23 2001

William A. Shaw  
Prothonotary

**FILED**

JUL 23 2007

William A. Shaw  
Prothonotary

*WAS*

*cc*

**William A. Shaw**  
Prothonotary

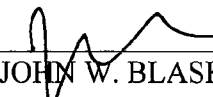
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Luna's Request for Production (Set Two), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 1<sup>st</sup> day of August, 2001, to Philip A. Fabiano, Esquire, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219, Walter F. Wall, Esquire, 120 Lakemont Park Boulevard, Altoona, PA 16602 and Michael Sosnowski, Esquire, P. O. Box 533, Hollidaysburg, PA 16648-0533.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Luna's Expert Interrogatories, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 1<sup>st</sup> day of August, 2001, to Philip A. Fabiano, Esquire, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219, Walter F. Wall, Esquire, 120 Lakemont Park Boulevard, Altoona, PA 16602 and Michael Sosnowski, Esquire, P. O. Box 533, Hollidaysburg, PA 16648-0533.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
Attorneys for Defendant  
Roberto Luna, M.D.

**FILED**

AUG 02 2001

*mbg/10*  
William A. Shaw  
Prothonotary  
*(610)*

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**COMPLAINT IN CIVIL ACTION AND  
CERTIFICATE OF SERVICE**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

AUG 03 2001

William A. Shaw  
Prothonotary



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

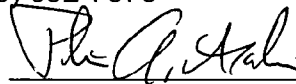
**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE  
Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Dated: July 31, 2001



Philip A. Fabiano  
Attorney for Plaintiff

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**COMPLAINT IN CIVIL ACTION**

AND NOW, comes the plaintiff, Rachel Traveny, by and through her attorneys, HOWARD MESSER & ASSOCIATES and PHILIP A. FABIANO, ESQUIRE and files the following Complaint in Civil Action, averring in support thereof:

1. The plaintiff, Rachel Traveny (formally known as Rachel McBride and hereinafter referred to as "plaintiff Rachel Traveny"), is an individual, *sui juris*, who resides at R.D. 1, Irvona, County of Clearfield, Commonwealth of Pennsylvania 16656.

2. Defendant, Praxidio H. Tagala, M.D., (hereinafter "defendant Tagala, M.D."), is an individual and a physician duly licensed to practice medicine in the Commonwealth of Pennsylvania, and at all times material hereto maintained a principal place of business at 615 Thompson Street, Clearfield, County of Clearfield, Commonwealth of Pennsylvania 16830.

3. Defendant Robert Luna, M.D., (hereinafter "defendant Luna, M.D."), is an individual and a physician duly licensed to practice medicine in the Commonwealth of Pennsylvania, and at all times material hereto maintained a principal place of business

at 10 N.W. Fourth Street, Clearfield, County of Clearfield, Commonwealth of Pennsylvania 16830.

4. Defendant Clearfield Hospital (hereinafter "defendant Clearfield Hospital or "defendant hospital"), is a corporation with a principal place of business located at 809 Turnpike Avenue, Clearfield, County of Clearfield, Commonwealth of Pennsylvania 16830 and at all times material hereto, defendant Clearfield Hospital is and was an organization engaged in providing and overseeing hospital facilities and services for the treatment of patients and held itself out as possessing the requisite facilities and skills for the safe and proper handling of such patients and their conditions.

5. At all times material hereto, plaintiff Rachel Traveny was under the care of defendant Luna, M.D., and defendant Tagala, M.D., for symptoms which included off and on heavy menstruation and pelvic pain for approximately eight months.

6. On or about June 26, 1985, plaintiff Rachel Traveny underwent a D&C, biopsy, laparoscopy and catherization of the cervix performed by defendant Tagala, M.D., at defendant Clearfield Hospital and plaintiff was specifically told the exams were negative and her reproductive organs "looked good" and no source for plaintiff's symptoms could be found.

7. Plaintiff Rachel Traveny was placed on course of hormonal therapy which was later explained to plaintiff as being unsuccessful.

8. Defendant Tagala, M.D., and defendant Luna, M.D., thereafter informed plaintiff Rachel Traveny her only option to treat her condition was a complete hysterectomy since there was no other available or alternative treatment or therapy and

that such procedure was necessary since plaintiff was at risk for bleeding to death and future pregnancy was inadvisable due to a high risk of miscarriage and deformity of the baby.

9. On December 12, 1985, plaintiff Rachel Traveny underwent a total abdominal hysterectomy, and more specifically a bilateral salpingo-oophorectomy, lysis of adhesions and appendectomy performed by defendant Tagala, M.D., and defendant Luna, M.D., at defendant Clearfield Hospital.

10. Immediately following the surgery, defendant Tagala, M.D., informed plaintiff Rachel Traveny she had cancer and she was fortunate the surgical procedure was timely performed.

11. Following the surgery, plaintiff Rachel Traveny began to suffer debilitating headaches, hot flashes, night sweats, bladder dysfunction, mood swings, depression and complications from the surgical procedures performed by the defendants and she has continued on hormonal therapy.

12. The injuries and damages suffered by the plaintiff are the direct and proximate result of the acts and/or omissions of the defendants as hereinafter set forth.

#### **COUNT I – NEGLIGENCE**

##### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

13. Plaintiff hereby incorporates paragraphs 1 through 12 of the Complaint as though fully set forth at length herein.

14. The losses and damages sustained by plaintiff are the direct and proximate result of the negligence and carelessness of defendant Tagala, M.D., either directly or through agents, servants, and employees or other representatives, in the following particulars:

- (a) In performing a complete hysterectomy and bilateral salpingo-oophorectomy and the other surgical procedures on the plaintiff Rachel Traveny which were unnecessary, not indicated and/or contraindicated;
- (b) In failing to adequately, properly, completely and/or timely render a correct diagnosis of plaintiff's condition and provide treatment to plaintiff;
- (c) In failing to timely diagnose and in misdiagnosing the signs and symptoms of endometriosis and/or the true nature and extent of plaintiff's condition;
- (d) In continuing to care for and/or treat and/or attempt to care for and/or treat plaintiff when defendant knew or reasonably should have known that the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary;
- (e) In failing to perform a complete and thorough evaluation of patient's condition prior to procedures performed and therefore, failing to make a sound decision as to the necessity and advisability for the procedures undertaken by the defendants;
- (f) In failing to timely diagnose and recommend and conduct further testing or recommend and initiate alternative treatment of plaintiff's condition prior to the surgical procedures performed;
- (g) In recommending a hysterectomy and bilateral salpingo—oophorectomy and the other surgical procedures when defendant knew or should have known such procedure was unnecessary and/or contraindicated;
- (h) In failing to adequately, properly and/or timely treat plaintiff's endometriosis;

- (i) In failing to act upon a diagnosis of pre-surgical findings on diagnostic/pathology results;
- (j) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the true cause of plaintiff's condition/symptoms;
- (k) In failing to promptly and timely order sufficient, proper and necessary diagnostic studies to assess the degree of severity of plaintiff's medical condition and particularly her underlying endometriosis and with regard to the complaints of the plaintiff and to access and to diagnose the true nature and cause of plaintiff's symptoms and conditions as heretofore set forth;
- (l) In failing to adequately, properly completely and/or timely interpret the symptomatology of plaintiff, the results, examinations and/or tests conducted for or with respect to plaintiff and/or failing to review and act upon those test results;
- (m) In failing to adequately, properly, completely and/or timely act on the basis of the results of the tests of examinations conducted on or tests conducted for or with respect to plaintiff;
- (n) In misinterpreting the results of the tests and/or examinations conducted on or with respect to plaintiff and/or failing to review and act upon those test results;
- (o) In failing to make and conduct tests and examinations that would have disclosed the true nature and extent of plaintiff's condition;
- (p) In failing to know and/or develop accepted and proper differential diagnosis in the care and treatment of plaintiff;
- (q) In failing to obtain appropriate specialty consultations for plaintiff's condition and/or to acquire proper information to diagnose, treat and/or care for plaintiff;
- (r) In failing to obtain timely and appropriate diagnostic tests and specialty consultations to investigate the cause of the complaints of the plaintiff;

- (s) In failing to institute and/or consider other forms of treatment for plaintiff's condition such as medical treatment, adjustment of hormone therapy or alternative hormone medications and/or less radical surgical procedures prior to recommending and performing the type of surgery performed by defendant(s);
- (t) In failing to acquire the proper knowledge, skill, education and credentials to perform the said procedures and to treat plaintiff's conditions;
- (u) In failing to entertain a differential diagnosis of endometriosis;
- (v) In failing to adequately, properly, completely and/or timely provide proper and/or adequate and/or other diagnostic equipment;
- (w) In failing to refer plaintiff's test results to a physician or other health care provider who could properly treat and care for plaintiff and/or properly interpret the act upon the test results;
- (x) In increasing plaintiff's risk of harm by depriving plaintiff of all available medical and/or less radical surgical intervention for the treatment of plaintiff's true medical condition;
- (y) In failing to consult with an oncologist, pathologist, surgeon, radiologist, gynecologist, gastroenterologist and other specialist based upon plaintiff's medical history and subjective complaints and objective findings;
- (z) In failing to provide or recommend further treatment to plaintiff, which, under the circumstances, would have prevented or reduced the likelihood that plaintiff would require a hysterectomy, bilateral salpingo-oophorectomy;
- (aa) In misdiagnosing plaintiff Rachel Traveny with cancer;
- (bb) In prescribing hormone therapy and the type of hormone therapy initiated by the defendant prior to the surgical procedures undertaken by the defendant;
- (cc) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the severity of plaintiff's condition;

- (dd) In delaying treatment to plaintiff which would have reduced or prevented progression of plaintiff's condition;
- (ee) In failing to take an adequate history from the plaintiff
- (ff) In failing to properly recommend or perform adequate follow up care and treatment;
- (gg) In failing to salvage plaintiff's reproductive organs;
- (hh) In failing to follow the policies and procedures of the medical service set forth by the medical staff practicing at defendant Clearfield Hospital;
- (ii) In failing to perform an adequate physical examination of the plaintiff;
- (jj) In failing to instruct, train, hire, select or adequately supervise its agents, servants or employees in the proper interpretation of symptomatology and results of examination and/or testing to recognize signs and symptoms of cancer and endometriosis;
- (kk) In failing to put in place procedures and/or standing orders for the proper management of individuals who present with signs and symptoms of abdominal/pelvic pain, menstrual bleeding to ensure a correct diagnosis and initiation of medical and/or less radical procedures for plaintiff's condition prior to the initiation of surgical procedures performed;
- (ll) In failing to put in place procedures and/or standing orders for the transmission, review and action upon results of diagnostic testing/observations and/or the recommendations for further testing; and
- (mm) In failing to monitor and observe plaintiff's condition with a sufficient frequency or in a sufficient manner, or in a reasonable manner, when defendant knew, or should have known, that frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and treat plaintiff's underlying condition and would thereby reduce the risk that plaintiff would require surgical intervention or radical surgical intervention.



15. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;
- (l) Mood swings;
- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff's medical records and reports.

16. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

17. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

18. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.

19. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

20. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the court, exclusive of costs and interest.

**COUNT II – INFORMED CONSENT/BATTERY**

**Rachel Traveny v. Praxidio H. Tagala, M.D.**

21. Plaintiff hereby incorporates paragraphs 1 through 20 as though the same were fully set forth at length.

22. Defendant Tagala, M.D., recommended radical surgical procedures as aforesaid to be performed on the plaintiff Rachel Traveny when such procedures were unnecessary and/or contraindicated.

23. At no time did defendant Tagala, M.D., prior to the said surgical procedures, adequately or sufficiently advise or inform the plaintiff or her family of the actual necessity of the surgical procedures recommended and performed on plaintiff and/or the risks for injury associated with the surgical procedures and/or injuries and complications resulting from said the said procedures which could occur, were possible, probable or likely.

24. Defendant Tagala, M.D., did not inform plaintiff or his family of defendant's limitation in terms of expertise and ability to diagnose or treat plaintiff's condition.

25. Defendant Tagala, M.D., failed to explain to the plaintiff or her family of alternative modalities of treatment such as conservative and medical care versus operative intervention and/or less radical operative intervention and also failing to explain to plaintiff the basis for the operative procedures recommended by the defendant.

26. Defendant Tagala, M.D., failed to tailor any explanations to plaintiff's ability to comprehend.

27. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;
- (l) Mood swings;
- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff's medical records and reports.

28. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

29. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

30. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.

31. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

32. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

26. Defendant Tagala, M.D., failed to tailor any explanations to plaintiff's ability to comprehend.

27. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;
- (l) Mood swings;
- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff' medical records and reports.

28. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

29. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

30. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.

31. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

32. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the court, exclusive of costs and interest.

### **COUNT III – NEGLIGENCE**

#### **Rachel Traveny v. Roberto Luna, M.D.**

33. Plaintiff hereby incorporates paragraphs 1 through 32 of the Complaint as though fully set forth at length herein.

34. The losses and damages sustained by plaintiff was the direct and proximate result of the negligence and carelessness of defendant Luna, M.D., either directly or through agents, servants, and employees or other representatives, in the following particulars:

- (a) In performing a complete hysterectomy and bilateral salpingo-oophorectomy and the other surgical procedures on the plaintiff Rachel Traveny which were unnecessary, not indicated and/or contraindicated;
- (b) In failing to adequately, properly, completely and/or timely render a correct diagnosis of plaintiff's condition and provide treatment to plaintiff;
- (c) In failing to timely diagnose and in misdiagnosing the signs and symptoms of endometriosis and/or the true nature and extent of plaintiff's condition;
- (d) In continuing to care for and/or treat and/or attempt to care for and/or treat plaintiff when defendant knew or reasonably should have known that the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary;
- (e) In failing to perform a complete and thorough evaluation of patient's condition prior to procedures performed and therefore, failing to make a sound decision as to the necessity and advisability for the procedures undertaken by the defendants;



- (f) In failing to timely diagnose and recommend and conduct further testing or recommend and initiate alternative treatment of plaintiff's condition prior to the surgical procedures performed;
- (g) In recommending a hysterectomy and bilateral salpingo—oophorectomy and the other surgical procedures when defendant knew or should have known such procedure was unnecessary and/or contraindicated;
- (h) In failing to adequately, properly and/or timely treat plaintiff's endometriosis;
- (i) In failing to act upon a diagnosis of pre-surgical findings on diagnostic/pathology results;
- (j) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the true cause of plaintiff's condition/symptoms;
- (k) In failing to promptly and timely order sufficient, proper and necessary diagnostic studies to assess the degree of severity of plaintiff's medical condition and particularly her underlying endometriosis and with regard to the complaints of the plaintiff and to access and to diagnose the true nature and cause of plaintiff's symptoms and conditions as heretofore set forth;
- (l) In failing to adequately, properly completely and/or timely interpret the symptomatology of plaintiff, the results, examinations and/or tests conducted for or with respect to plaintiff and/or failing to review and act upon those test results;
- (m) In failing to adequately, properly, completely and/or timely act on the basis of the results of the tests of examinations conducted on or tests conducted for or with respect to plaintiff;
- (n) In misinterpreting the results of the tests and/or examinations conducted on or with respect to plaintiff and/or failing to review and act upon those test results;

- (o) In failing to make and conduct tests and examinations that would have disclosed the true nature and extent of plaintiff's condition;
- (p) In failing to know and/or develop accepted and proper differential diagnosis in the care and treatment of plaintiff;
- (q) In failing to obtain appropriate specialty consultations for plaintiff's condition and/or to acquire proper information to diagnose, treat and/or care for plaintiff;
- (r) In failing to obtain timely and appropriate diagnostic tests and specialty consultations to investigate the cause of the complaints of the plaintiff;
- (s) In failing to institute and/or consider other forms of treatment for plaintiff's condition such as medical treatment, adjustment of hormone therapy or alternative hormone medications and/or less radical surgical procedures prior to recommending and performing the type of surgery performed by defendant(s);
- (t) In failing to acquire the proper knowledge, skill, education and credentials to perform the said procedures and to treat plaintiff's conditions;
- (u) In failing to entertain a differential diagnosis of endometriosis;
- (v) In failing to adequately, properly, completely and/or timely provide proper and/or adequate and/or other diagnostic equipment;
- (w) In failing to refer plaintiff's test results to a physician or other health care provider who could properly treat and care for plaintiff and/or properly interpret the act upon the test results;
- (x) In increasing plaintiff's risk of harm by depriving plaintiff of all available medical and/or less radical surgical intervention for the treatment of plaintiff's true medical condition;
- (y) In failing to consult with an oncologist, pathologist, surgeon, radiologist, gynecologist, gastroenterologist and other specialist based upon plaintiff's medical history and subjective complaints and objective findings;

- (z) In failing to provide or recommend further treatment to plaintiff, which, under the circumstances, would have prevented or reduced the likelihood that plaintiff would require a hysterectomy, bilateral salpingo-oophorectomy;
- (aa) In misdiagnosing plaintiff Rachel Traveny with cancer;
- (bb) In prescribing hormone therapy and the type of hormone therapy initiated by the defendant prior to the surgical procedures undertaken by the defendant;
- (cc) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the severity of plaintiff's condition;
- (dd) In delaying treatment to plaintiff which would have reduced or prevented progression of plaintiff's condition;
- (ee) In failing to take an adequate history from the plaintiff
- (ff) In failing to properly recommend or perform adequate follow up care and treatment;
- (gg) In failing to salvage plaintiff's reproductive organs;
- (hh) In failing to follow the policies and procedures of the medical service set forth by the medical staff practicing at defendant Clearfield Hospital;
- (ii) In failing to perform an adequate physical examination of the plaintiff;
- (jj) In failing to instruct, train, hire, select or adequately supervise its agents, servants or employees in the proper interpretation of symptomatology and results of examination and/or testing to recognize signs and symptoms of cancer and endometriosis;
- (kk) In failing to put in place procedures and/or standing orders for the proper management of individuals who present with signs and symptoms of abdominal/pelvic pain, menstrual bleeding to ensure a correct diagnosis and initiation of medical and/or less radical procedures for plaintiff's condition prior to the initiation of surgical procedures performed;

- (ll) In failing to put in place procedures and/or standing orders for the transmission, review and action upon results of diagnostic testing/observations and/or the recommendations for further testing; and
- (mm) In failing to monitor and observe plaintiff's condition with a sufficient frequency or in a sufficient manner, or in a reasonable manner, when defendant knew, or should have known, that frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and treat plaintiff's underlying condition and would thereby reduce the risk that plaintiff would require surgical intervention or radical surgical intervention.

35. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;

- (l) Mood swings;
- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff's medical records and reports.

36. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

37. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

38. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.

39. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

40. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the court, exclusive of costs and interest.

#### **COUNT IV – INFORMED CONSENT/BATTERY**

##### **Rachel Traveny v. Roberto Luna, M.D.**

41. Plaintiff hereby incorporates paragraphs 1 through 40 as though the same were fully set forth at length.

42. Defendant Luna, M.D., recommended radical surgical procedures as aforesaid to be performed on the plaintiff Rachel Traveny when such procedures were unnecessary and/or contraindicated.

43. At no time did defendant Luna, M.D., prior to the said surgical procedures, adequately or sufficiently advise or inform the plaintiff or her family of the actual necessity for the surgical procedures recommended and performed on plaintiff and/or the risks of injury associated with the surgical procedures and/or injuries and complications resulting from said the said procedures which could occur, were possible, probable or likely.

44. Defendant Luna, M.D., did not inform plaintiff or his family of defendant's limitation in terms of expertise and ability to diagnose or treat plaintiff's condition.

45. Defendant Luna, M.D., failed to explain to the plaintiff or her family of alternative modalities of treatment such as conservative and medical care versus operative intervention and/or less radical operative intervention and also failing to explain to plaintiff the basis for the operative procedures recommended by the defendant.

46. Defendant Luna, M.D., failed to tailor any explanations to plaintiff's ability to comprehend.

47. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;
- (l) Mood swings;

- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff' medical records and reports.

48. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

49. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

50. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.



51. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

52. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the court, exclusive of costs and interest.

### **COUNT V- NEGLIGENCE**

#### **Rachel Traveny v. Clearfield Hospital**

53. The plaintiff incorporates paragraphs 1 through 52 by reference as though the same were fully set forth at length.

54. All of the resultant injuries, losses and damages sustained by plaintiff were the direct and proximate result of the negligent and/or careless acts of defendant and its agents, servants, and/or employees who were acting within the scope and course of their employment and authority, as follows:

- (a) In failing to instruct, train, hire, select or adequately supervise its agents, servants or employees in the proper interpretation of symptomatology and results of examination and/or testing to recognize signs and symptoms of endometriosis and/or cancer;
- (b) In failing to put in place procedures and/or supervise to ensure that its agents, servants or employees developed procedures for differential diagnoses, and in particular with regard to the plaintiff's condition;

- (c) In failing to select, credential, hire retain only competent physicians and/or other health care providers, including defendant Tagala, M.D., defendant Luna, M.D., who read and interpreted plaintiff's diagnostic studies and/or other physicians, personnel and technicians that attended plaintiff at defendant's facilities;
- (d) In failing to carefully supervise the conduct and activities of the personnel who were assisting plaintiff during the course of her evaluations and treatments at defendant's facility to ensure that the findings on diagnostic studies were properly and timely reported to attending physicians and were properly acted upon given the nature of the findings;
- (e) In failing to oversee all persons who practice medicine within its wall as to patient care;
- (f) In failing to ensure that specifically consultations were obtained prior to the surgical procedures performed;
- (g) In failing to adequately, properly, completely and/or timely provide proper and adequate and/or other diagnostic equipment;
- (h) In increasing plaintiff's risk of harm by depriving plaintiff of all available medical and surgical intervention for the treatment of plaintiff's condition;
- (i) In failing to adequately, properly, completely and/or timely render a correct diagnosis of plaintiff's condition;
- (j) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the severity of plaintiff's condition;
- (k) In failing to entertain a differential diagnosis of endometriosis;
- (l) In failing to act upon a diagnosis of pre-surgical findings on diagnostic/pathology results;
- (m) In failing to seek proper consultations with other physicians and/or to acquire proper information to care and treat plaintiff;
- (n) In failing to formulate, adopt and enforce adequate rules and policies to ensure quality care for its patients;

- (o) In failing to ensure prompt recognition of an untoward change in the plaintiff's condition and to facilitate the appropriate intervention by medical, nursing or hospital staff;
- (p) In maintaining an inadequate standing order/procedure for patients with signs and symptoms of cancer of endometriosis for proper, correct and timely diagnosis before initiating surgical procedures such as those performed on the plaintiff;
- (q) In failing to put in place procedures and/or standing orders for the proper management of individuals who present with signs and symptoms of endometriosis;
- (r) In failing to put in place procedures and/or standing orders for the transmission, review and action upon results of diagnostic testing/observations and/or the recommendations for further testing;
- (s) In failing to take and ensure an adequate history from the plaintiff;
- (t) In failing to adequately, properly, completely and/or timely interpret the symptomatology of plaintiff, the results of examinations and/or tests conducted on or with respect to plaintiff;
- (u) In failing to perform an adequate physical examination of the plaintiff;
- (v) In failing to monitor and observe plaintiff's condition with sufficient frequency or in a sufficient manner, or in a reasonable manner, when defendant knew, or should have known, that frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and reduce the risk that plaintiff would suffer injury; and
- (w) In failing to instruct, train, select or adequately supervise its agents, servants or employees in the proper interpretation of symptomatology and results of examination and/or testing to recognize signs of endometriosis.

55. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her agents, servants and/or employees, plaintiff suffered severe and serious injury as follows:

- (a) Hysterectomy and bilateral salpingo-oophorectomy;
- (b) Complications of hysterectomy;
- (c) Injury with damage to the internal organs of plaintiff's body;
- (d) Permanent scarring and disfigurement;
- (e) Post-traumatic syndrome, including anxiety, depression, psychosis and shock;
- (f) Loss of vitality, mobility, strength and residual pain;
- (g) Progression of plaintiff's condition necessitating additional medical treatment and care;
- (h) Shock and injury to nerves and nervous system;
- (i) Severe and debilitating headaches;
- (j) Complications/side effects hormonal therapy;
- (k) Bladder dysfunction;
- (l) Mood swings;
- (m) In the alternative, if any injury or medical condition is proven to be pre-existing, aggravation of such pre-existing injuries or medical conditions; and
- (n) Injuries as set forth more fully in plaintiff's medical records and reports.

56. As a direct and proximate result of the aforesaid negligence of the defendant's injuries referred to above, the plaintiff suffered and incurred the following damages:

- (a) Pain and suffering;
- (b) Inconvenience and embarrassment;
- (c) Mental anguish and shock; and
- (d) Loss of pleasure, enjoyment and activity.

57. As a direct and proximate result of the negligence of defendant and the injuries suffered by the plaintiff as aforesaid, the plaintiff has been obliged to spend various and diverse sums of money for medical care for injuries sustained as stated, and may continue to be obliged to do so for an indefinite period of time into the future, of her great detriment and loss.

58. As the direct, legal and proximate result of the injuries sustained, plaintiff has been and/or may be compelled to abstain from carrying on her normal and customary activities now and in the future, including wage loss and an impairment of her earning capacity.

59. As the direct, legal and proximate result of the injuries sustained, plaintiff has suffered and/or may suffer shock or injury to the nerves and nervous system and has suffered and/or may suffer emotional distress.

60. As a direct and proximately result of the negligence of defendant, plaintiff has been and/or may be compelled to abstain from carrying on her normal activities of daily living, and as a result thereof was and/or deprived of the ordinary pleasures of life.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the court, exclusive of costs and interest.

#### **COUNT VI – PUNITIVE DAMAGES**

##### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

61. The plaintiff incorporates paragraphs 1 through 60 by reference as though the same were fully set forth at length.

62. The conduct of defendant Tagala, M.D. as heretofore and hereinafter sets forth was willful and malicious, and constitutes a deliberate act or omission with a high probability of harm and reckless indifference to the consequences, by reason of which plaintiff is entitled to punitive damages.

63. The reckless and/or willful and/or outrageous conduct was as set forth:

- (a) Defendant Tagala, M.D., recommended radical surgical procedures as aforesaid to be performed on the plaintiff Rachel Traveny when such procedures were unnecessary and/or contraindicated; and
- (b) Defendant knew that such procedures were unnecessary and/or defendant's conduct in advising the plaintiff to undergo such procedures without adequate diagnosis or adequate exploration of alternative treatment was in reckless indifference to the integrity of plaintiff and the consequences to a 24-year-old woman.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the Court exclusive of costs and interest.

#### **COUNT VII – PUNITIVE DAMAGES**

##### **Rachel Traveny v. Roberto Luna, M.D.**

64. The plaintiff incorporates paragraphs 1 through 63 by reference as though the same were fully set forth at length.

65. The conduct of defendant Luna, M.D. as heretofore and hereinafter sets forth was willful and malicious, and constitutes a deliberate act or omission with a high probability of harm and reckless indifference to the consequences, by reason of which plaintiff is entitled to punitive damages as to the survival action only.


66. The reckless and/or willful and/or outrageous conduct was as set forth:

- (a) Defendant Luna M.D., recommended radical surgical procedures as aforesaid to be performed on the plaintiff Rachel Traveny when such procedures were unnecessary and/or contraindicated; and
- (b) Defendant knew that such procedures were unnecessary and/or defendant's conduct in advising the plaintiff to undergo such procedures without adequate diagnosis or adequate exploration of alternative treatment was in reckless indifference to the integrity of plaintiff and the consequences to a 24-year-old woman.

WHEREFORE, plaintiff demands judgment in an amount in excess of the arbitration limits of the Court exclusive of costs and interest.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES



---

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

**ATTORNEY VERIFICATION**

Counsel for plaintiff verifies that the statements made in Plaintiff's Complaint in Civil Action are true and correct to the best of his knowledge, information and belief and that insufficient time exists to obtain the verification of the plaintiff. A verification of the plaintiff will be obtained and filed with the Court to replace counsel's verification herein. Plaintiff's counsel understands that false statements herein are made subject to the penalties of 19 Pa C.S. Section 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", is written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff



**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Complaint in Civil Action and Certificate of Service** has been served this 15<sup>th</sup> day of August 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

Roberto Luna, M.D  
10 N.W. 4<sup>th</sup>  
Clearfield, PA 16830

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**



---

Philip A. Fabiano

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D., ROBERTO  
LUNA, M.D., and CLEARFIELD  
HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

Code No.

**PRAECIPE FOR ARGUMENT**

Filed on Behalf of Defendant, Praxidio H.  
Tagala, M.D.

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

AUG 17 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

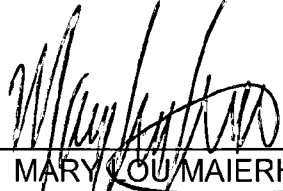
**PRAECIPE FOR ARGUMENT**

TO: PROTHONOTARY

Please place Defendant, Praxidio H. Tagala, M.D.'s Preliminary Objections to  
Plaintiff's Complaint on the next available argument list.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

  
\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
I.D. #62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the Law Firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, on behalf of Defendant, Praxidio H. Tagala, M.D., hereby certify that on the **9<sup>th</sup> day of August, 2001**, a true and correct copy of the Praeceptum for Argument was served upon Parties of record and/or Counsel by U.S. Mail, postage prepaid, addressed as follows:

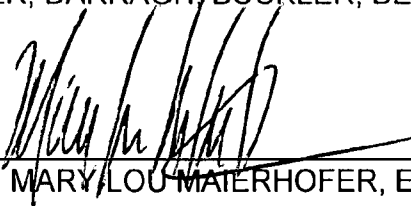
Howard F. Messer, Esquire  
Suite 1404  
Grant Building  
Pittsburgh, PA 15219

John W. Blasko, Esquire  
MCQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801

Michael A. Sosnowski, Esquire  
PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

MEYER, DARRAGH/BUCKLER, BEBENEK & ECK, PLLC

BY

  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
P.A. ID 62175

FILED NO  
APR 25 1961  
cc  
gels  
Copy to CR  
William A. Stier  
Professor

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**VERIFICATION TO PLAINTIFF'S  
COMPLAINT**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**FILED**

AUG 13 2001

William A. Shaw  
Prothonotary

**JURY TRIAL DEMANDED**

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

Code: 007

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**VERIFICATION TO PLAINTIFF'S COMPLAINT**

AND NOW, comes the plaintiff, by and through their attorneys, HOWARD MESSER & ASSOCIATES, and PHILIP A. FABIANO, ESQUIRE, and files a Verification to Plaintiffs' Complaint, the original of which is attached as Exhibit "1".

Respectfully submitted,

HOWARD MESSER & ASSOCIATES



Philip A. Fabiano  
Attorney for Plaintiffs

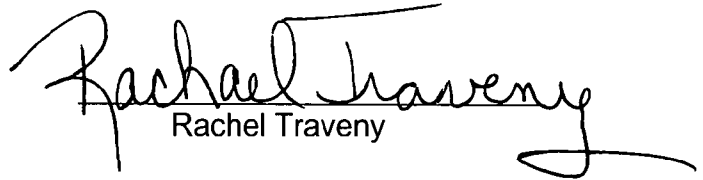
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200





### VERIFICATION

The undersigned, having read the attached pleading, verifies that the within pleading is based on information furnished to counsel, as well as information gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of the signer. Signer verifies that he/she has read the within pleading and that is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the pleading is that of counsel, I have relied upon counsel in making this Verification. This Verification is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsifications to authorities.

  
Rachel Traveny

DATED: 8-6-01

## CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **Verification to Plaintiff's Complaint** has been served this 13<sup>th</sup> day of August 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**



Philip A. Fabiano

FILED

mt 107 gr  
AUG 10 2001

1 cc - Atty Fabiano

William A. Shaw  
Prothonotary

(r)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D., ROBERTO  
LUNA, M.D., and CLEARFIELD  
HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

Code No.

**PRELIMINARY OBJECTIONS TO  
PLAINTIFF'S COMPLAINT**

Filed on Behalf of Defendant, Praxidio H.  
Tagala, M.D.

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.

Firm No. 198

120 Lakemont Park Blvd.

Altoona, PA 16602

Telephone No.: (814) 941-4600

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**FILED**

AUG 17 2001

**William A. Shaw**  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

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**ORDER OF COURT**

NOW THIS \_\_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of the Preliminary Objections to Plaintiff's Complaint, by Defendant, Praxidio H. Tagala, M.D., and after hearing upon same, the Court does hereby Order, Direct and Decree that Plaintiff's Complaint be dismissed with prejudice or in the alternative Paragraph 14 with its Subsections; Count II; and Count VI of Plaintiff's Complaint be stricken.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

: No. 01-1025-CD  
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**RULE**

NOW THIS \_\_\_\_\_ day of \_\_\_\_\_, 2001, a Rule is hereby issued upon Plaintiff, Rachel Traveny, to show cause, if any there should be, why the Preliminary Objections to Plaintiff's Complaint, of Defendant, Praxidio H. Tagala, M.D., should not be granted.

Said Rule Returnable the \_\_\_\_\_ day of \_\_\_\_\_, 2001, at \_\_\_\_\_ o'clock, \_\_\_\_\_m., Courtroom No. \_\_\_\_\_, Clearfield County Courthouse, Clearfield, Pennsylvania.

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,	:	No. 01-1025-CD
Plaintiff	:	
	:	
vs.	:	
	:	
PRAXIDIO H. TAGALA, M.D.;	:	
ROBERTO LUNA, M.D.,	:	
and CLEARFIELD HOSPITAL	:	
Defendants	:	

**PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

NOW COMES the Defendant, PRAXIDIO H. TAGALA, M.D., by and through his counsel, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC and files these Preliminary Objections to Plaintiff's Complaint of which the following is the statement:

1. Plaintiff commenced this litigation by filing a Writ of Summons on June 27, 2001 and thereafter pursuant to praecipes to do so, filed a Complaint on or about August 3, 2001.

**I. DEMURRER**  
**(Statute of Limitations)**

2. Plaintiff indicates that on or about June 26, 1985 she underwent a D&C, biopsy, laparoscopy and catheterization of the cervix performed by this Defendant and thereafter underwent on December 12, 1985 a total abdominal hysterectomy, more specifically a bilateral salpingo-oophorectomy, lysis adhesions and appendectomy.

(See paragraphs 6 and 9 of Plaintiff's Complaint)

3. Plaintiff did not commence this litigation until filing a Writ of Summons on June 27, 2001.

4. Plaintiff bases her Complaint upon a negligence and lack of informed consent claims in a medical malpractice situation which is a two year statute of limitations.

5. Plaintiff does not allege any facts that would permit her to proceed with this litigation due to the dates as set forth by the Plaintiff in her Complaint.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that Plaintiff's Complaint be dismissed with prejudice.

**II. MOTION TO STRIKE**  
**(Violation of Pa.R.C.P. 1019 (a))**

6. The allegations set forth above are incorporated herein by reference thereto as if the same were set forth at length.

7. Plaintiff sets forth in Count I - "negligence" against this Defendant and specifically sets forth the following:

14. The losses and damages sustained by plaintiff are the direct and proximate result of the negligence and carelessness of defendant, either directly or through agents, servants and employees or other representatives in the following particulars:

- (a) In performing a complete hysterectomy and bilateral salpingo-oophorectomy and the other surgical procedures on the plaintiff which were unnecessary, not indicated and/or contraindicated;
- (b) In failing to adequately, properly, completely and/or timely render a correct diagnosis of plaintiff's condition and provide treatment to plaintiff;
- (c) In failing to timely diagnose and in misdiagnosing the signs and symptoms of endometriosis and/or the true nature and extent of plaintiff's condition;



- (d) In continuing to care for and/or treat and/or attempt to care for and/or treat plaintiff when Defendant knew or reasonable should have known that the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary;
- (e) In failing to perform a complete and thorough evaluation of plaintiff's condition prior to procedures performed and therefore, failing to make a sound decision as to the necessary and advisability for the procedures undertaken by the defendants;
- (f) In failing to timely diagnose and recommend and conduct further testing or recommend and initiate alternative treatment of plaintiff's condition prior to the surgical procedures performed;
- (g) In recommending a hysterectomy and bilateral salpingo-oophorectomy and the other surgical procedures when the defendant knew or should have known such procedure was unnecessary and/or contraindicated;
- (h) In failing to adequately, properly and/or timely treat plaintiff's endometriosis;
- (i) In failing to act upon a diagnosis of pre-surgical findings on diagnostic/pathology results;
- (j) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and the true cause of plaintiff's condition/symptoms;
- (k) In failing to promptly and timely order sufficient, proper and necessary diagnostic studies to assess the degree of severity of plaintiff's medical condition and particularly her underlying endometriosis and with regard to the complaints of the plaintiff and to assess and diagnose the true nature and cause of plaintiff's symptoms and conditions as hereto set forth;
- (l) In failing to adequately, properly, completely and/or timely

interpret the symptomology of plaintiff, the results, examination and/or tests conducted for or with respect to plaintiff and/or failing to review and act upon those test results;

- (m) In failing to adequately, properly, complete and/or timely act on the basis of the results of the tests of examinations conducted on or tests conducted for or with respect to plaintiff;
- (n) In misinterpreting the results of the tests and/or examinations conducted on or with respect to plaintiff and/or failing to review and act upon those test results;
- (o) In failing to make and conduct tests and examinations that would have disclosed the true nature and extent of plaintiff's condition;
- (p) In failing to know and/or develop accepted and proper differential diagnosis in the care and treatment of plaintiff;
- (q) In failing to obtain appropriate specialty consultations for plaintiff's condition and/or to acquire proper information to diagnose, treat and/or care for plaintiff;
- (r) In failing to obtain timely and appropriate diagnostic tests and specialty consultations to investigate the cause of the complaints of the plaintiff;
- (s) In failing to institute and/or consider other forms of treatment for plaintiff's condition such as medical treatment, adjustment of hormone therapy or alternative hormone medications and/or less radical surgical procedures prior to recommending and performing the types of surgery performed by defendant(s);
- (t) In failing to acquire the proper knowledge, skill, education and credentials to perform the said procedures and to treat plaintiff's condition;
- (u) In failing to entertain a differential diagnosis of endometriosis;

- (v) In failing to adequately, properly, completely and/or timely provide proper and/or adequate and/or other diagnostic equipment;
- (w) In failing to refer plaintiff's test results to a physician or other health care provider who could properly treat and care for the plaintiff and/or properly interpret the act upon the test results;
- (x) In increasing plaintiff's risk of harm by depriving plaintiff of all available medical and/or less radical surgical intervention for the treatment of plaintiff's true medical condition;
- (y) In failing to consult with an oncologist, pathologist, surgeon, radiologist, gynecologist, gastroenterologist and other specialist based upon plaintiff's medical history and subjective complaints and objective findings;
- (z) In failing to provide or recommend further treatment to plaintiff, which, under the circumstances, would have prevented or reduced the likelihood that plaintiff would require a hysterectomy, bilateral salpingo-oophorectomy;
- (aa) In misdiagnosing plaintiff Rachel Traveny with cancer;
- (bb) In prescribing hormone therapy and the type of hormone therapy initiated by the defendant prior to the surgical procedures undertaken by the defendant;
- (cc) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and the severity of plaintiff's condition;
- (dd) In delaying treatment to plaintiff which would have reduced or prevented progression of plaintiff's condition;
- (ee) In failing to take an adequate history from the plaintiff;
- (ff) In failing to properly recommend or perform adequate follow up care and treatment;
- (gg) In failing to salvage plaintiff's reproductive organs;

- (hh) In failing to follow the policies and procedure of the medical service set forth by the medical staff practicing at defendant Clearfield Hospital;
- (ii) In failing to perform an adequate physical examination of the plaintiff;
- (jj) In failing to instruct, train, hire, select or adequately supervise its agents, servants or employees in the proper interpretation of symptomatology and results of examination and/or testing to recognize signs and symptoms of cancer and endometriosis;
- (kk) In failing to put in place procedures and/or standing orders for the proper management of individuals who present with signs and symptoms of abdominal/pelvis pain, menstrual bleeding to ensure a correct diagnosis and initiation of medical and/or less radical procedures for plaintiff's condition prior to the initiation of surgical procedures performed;
- (ll) In failing to put in place procedures and/or standing orders for the transmission, review and action upon results of diagnostic testing/observations and/or the recommendations for further testing; and
- (mm) In failing to monitor and observe plaintiff's condition with a sufficient frequency or in a sufficient manner, or in a reasonable manner, when defendant knew, or should have known, that frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and treat plaintiff's underlying condition and would thereby reduce the risk that plaintiff would require surgical intervention or radical surgical intervention.

8. Plaintiff, in the introduction to paragraph 14 states "either directly or through agents, servants, and employees or other representatives..." when describing the negligence and carelessness directed towards this defendant.

9. Plaintiff nowhere in the Complaint identifies any of these agents, servants and/or employees or other representatives of this defendant.

10. Such allegations are clearly over broad and fail to identify the specific individuals which would provide notice to this defendant so that he may properly defend himself against allegations set forth by the plaintiff.

11. Further, in paragraph 14 subsections (a) through (mm), plaintiff sets forth clearly overly broad and boiler-plate type allegations which violate Pa.R.C.P. § 1019 (a).

12. Defendant is required to object to these overly broad allegations to prevent the plaintiff the opportunity to allege other causes of action and/or negligence against this defendant at a future time.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that paragraph 14 with its subsections be stricken.

**III. DEMURRER**  
**(Lack of Informed Consent)**

13. The allegations set forth above are incorporated herein by reference thereto as if the same were set forth at length.

14. Plaintiff sets forth in Count II of her Complaint an "Informed Consent/Battery" cause of action against this defendant.

15. Plaintiff alleges in Count II the following:

23. At no time did defendant, Tagala, M.D., prior to the said surgical procedures, adequately, or sufficiently advise or inform the plaintiff or her family of the actual necessity of the surgical procedures recommended and performed on plaintiff and/or the risks for injury associated with the surgical procedures and/or injuries and complications resulting from the said procedures which could occur, where possible, probable or likely.

24. Defendant, Tagala, M.D., did not inform plaintiff of his [sic]

family of defendant's limitation in terms of expertise and ability to diagnose or treat plaintiff's condition.

25. Defendant, Tagala, M.D., failed to explain to the plaintiff or her family of alternative modalities of treatment such as conservative and medical care versus operative intervention and/or less radical operative intervention and also failing to explain to plaintiff the basis for operative procedures recommended by the defendant.

26. Defendant, Tagala, M.D., failed to tailor any explanations to plaintiff's ability to comprehend.

16. Lack of informed consent only goes to the patient providing consent, not "family".

17. Based upon the factual information provided in the Complaint, it appears that plaintiff underwent at least two procedures, one on June 26, 1985 and one on December 12, 1985. (See Plaintiff's Complaint paragraphs 6 and 9).

18. Plaintiff has failed to set forth a claim for an informed consent violation as it is unclear as to the surgical processes, specifically what is being claimed against each of the defendant doctors as well as the processes themselves.

19. Plaintiff's Complaint is void of the necessary specifics in order to plead an informed consent claim as against this defendant.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that Count II of Plaintiff's Complaint be dismissed with prejudice.

#### **IV. MOTION TO STRIKE** **(Punitive Damages)**

20. The allegations set forth above are incorporated herein by reference thereto as if the same were set forth at length.

21. Plaintiff alleges in Count VI of her Complaint, Punitive Damages against this defendant.

22. Plaintiff has failed to allege facts sufficient in order to make a claim for Punitive Damages.

23. Plaintiff only claims the following:

63. The reckless and/or willful and/or outrageous conduct was set forth:

- (a) Defendant Tagala, M.D., recommended radical surgery procedures as aforesaid to be performed on the plaintiff, Rachel Traveny when such procedures were unnecessary and/or contraindicated; and
- (b) Defendant knew that such procedures were unnecessary and/or defendant's conduct in advising the plaintiff to undergo such procedures without adequate diagnosis or adequate exploration of alternative treatment was in reckless indifference to the integrity of plaintiff and the consequences to a 24-year-old woman.

24. The allegations as set forth above in paragraph 63 as well as the factual allegations set forth in Plaintiff's Complaint are inadequate to set forth a claim for Punitive Damages thereby Count VI of Plaintiff's Complaint must be stricken,

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that Count VI of Plaintiff's Complaint be dismissed with prejudice.

**V. DEMURRER**  
**(Violation of Pa.R.C.P. 1024)**

25. The allegations set forth above are incorporated by reference thereto as if the same were set forth at length.

26. Plaintiff attaches an Attorneys Verification without setting forth the reasons why plaintiff is unable to verify the within Complaint.

27. Plaintiff is in violation of Pa.R.C.P. 1024 as a result of failing to attach a properly executed verification by plaintiff.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that Plaintiff's Complaint be dismissed with prejudice.

**VI. MOTION TO STRIKE**  
**(Violation of Pa.R.C.P. 1020)**

28. The allegations set forth above are incorporated by reference thereto as if the same were set forth at length.

29. Plaintiff sets forth under Count VI Punitive Damages against this defendant and incorporates paragraphs 1 through 60 in paragraph 61.

30. Such is improper as it is incorporating allegations against other Defendants as against this Defendant.

31. Such is in violation of Pa.R.C.P. 1020 (a) thus must be stricken.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., prays that paragraph 61 of Plaintiff's Complaint be stricken.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
I.D. #62175



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL  
Defendants

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the Law Firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, on behalf of Defendant, Praxidio H. Tagala, M.D., hereby certify that on the **9<sup>th</sup> day of August, 2001**, a true and correct copy of the Preliminary Objections to Plaintiff's Complaint was served upon Parties of record and/or Counsel by U.S. Mail, postage prepaid, addressed as follows:

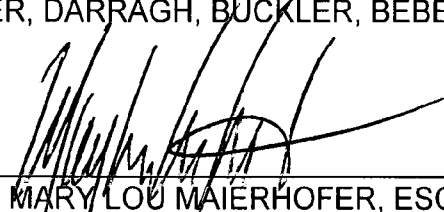
Howard F. Messer, Esquire  
Suite 1404  
Grant Building  
Pittsburgh, PA 15219

John W. Blasko, Esquire  
MCQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801

Michael A. Sosnowski, Esquire  
PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

  
\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
P.A. ID 62175

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

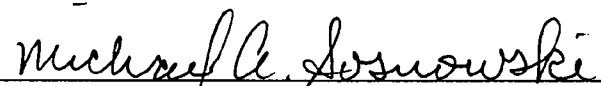
01 - 1025 - CD

**ISSUE:**  
**PRELIMINARY OBJECTIONS TO**  
**PLAINTIFF'S COMPLAINT**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 - FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 13<sup>th</sup> DAY OF **AUGUST, 2001.**

  
Attorneys for Named Defendant

**FILED**

AUG 14 2001

**William A. Shaw**  
Prothonotary

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

01 – 1025 – CD

**JURY TRIAL DEMANDED**

**ORDER OF COURT**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2001, the Court having considered the Preliminary Objections filed on behalf of Defendant, Clearfield Hospital, it is hereby ORDERED that said Preliminary Objections are SUSTAINED. Accordingly, Paragraph 54 (d) – (j), (l) – (o), (t) and (v) are stricken as they exist. Plaintiff is directed to file a more specific Complaint if they intend to do so with respect to these subparagraphs. Furthermore, Plaintiff shall file a more specific Complaint with respect to its allegations of “agents, servants and/or employees” in Paragraph 54 relative to Clearfield Hospital. This Amended Complaint shall be filed within thirty (30) days from the date of this Order.

---

By the Court

RACHEL TRAVENY,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PA
Plaintiff,	:	
	:	
vs.	:	01 – 1025 – CD
	:	
PRAXIDIO H. TAGALA, MD., ROBERTO	:	
LUNA, M.D. and CLEARFIELD HOSPITAL,	:	
	:	
Defendants.	:	<b>JURY TRIAL DEMANDED</b>

**PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**

Defendant, CLEARFIELD HOSPITAL, through its counsel, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, files the following Preliminary Objections to Plaintiff's Complaint.

1. This is a medical malpractice action alleging that the Defendants were negligent relative to gynecological care rendered to Plaintiff during the year 1985.
2. Upon being ruled to do so, Plaintiff filed a voluminous Complaint which directed various Counts against the various Defendants.
3. Included among the Counts in Plaintiff's Complaint is Count V, entitled "Negligence" and directed against Clearfield Hospital.
4. Included within Count V is Paragraph 54, which alleges that, "the resultant injuries, losses and damages sustained by plaintiff were the direct and proximate result of the negligent and/or careless acts of defendant *and its agents, servants, and/or employees who were acting within the scope and course of their employment and authority . . .*."
5. Nowhere in the Complaint are any "agents, servants and/or employees" of Clearfield Hospital identified. The Complaint does not even set forth any alleged agency relationship between the Co-Defendant physicians and Clearfield Hospital.
6. The significance in this vague, non-specific pleading is that many of the sub-paragraphs in Paragraph 54 make reference to "agents, servants and/or employees" when referencing particular failures. Without knowing to whom or in what context these allegations are being directed, it is impossible for Clearfield Hospital to respond.

7. Also included within Paragraph 54 are the following subparagraphs:

...

- (d) In failing to carefully supervise the conduct and activities of the personnel who were assisting plaintiff during the course of her evaluations and treatments at defendant's facility to ensure that the findings on diagnostic studies were properly and timely reported to attending physicians and were properly acted upon given the nature of the findings;
- (e) In failing to oversee all persons who practice medicine within its wall as to patient care;
- (f) In failing to ensure that specifically consultations were obtained prior to the surgical procedures performed;
- (g) In failing to adequately, properly, completely and/or timely provide proper and adequate and/or other diagnostic equipment;
- (h) In increasing plaintiff's risk of harm by depriving plaintiff of all available medical and surgical intervention for the treatment of plaintiff's condition;
- (i) In failing to adequately, properly, completely and/or timely render a correct diagnosis of plaintiff's condition;
- (j) In ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the severity of plaintiff's condition;

...

- (l) In failing to act upon a diagnosis of pre-surgical findings on diagnostic/pathology results;
- (m) In failing to seek proper consultations with other physicians and/or to acquire proper information to care and treat plaintiff;
- (n) In failing to formulate, adopt and enforce adequate rules and policies to ensure quality care for its patients;
- (o) In failing to ensure prompt recognition of an untoward change in the plaintiff's condition and to facilitate the appropriate intervention by medical, nursing or hospital staff;

...

- (t) In failing to adequately, properly, completely and/or timely interpret the symptomatology of plaintiff, the results of examinations and/or tests conducted on or with respect to plaintiff;

- ...
- (v) In failing to monitor and observe plaintiff's condition with sufficient frequency or in sufficient manner, or in a reasonable manner, when defendant knew, or should have known, that frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and reduce the risk that plaintiff would suffer injury; and
- ...

8. The sub-paragraphs referenced above are vague, non-specific boilerplate which do not advise Clearfield Hospital of what it supposedly did wrong within the context of this case and this patient.

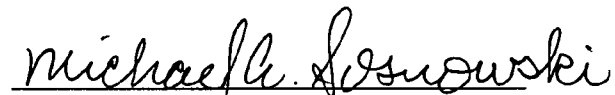
9. Additionally, the subparagraphs set forth above could potentially allow Plaintiff to expand her claim at a later date in a manner which could be prejudicial to Clearfield Hospital.

10. Because Plaintiff's Complaint is outlined above has failed to comply with Pennsylvania's specificity in pleading requirement as set forth in Pa R.C.P. 1019 (a), these Paragraphs should be stricken or, in the alternative, Plaintiff should be required to replead her Complaint to cure these deficiencies.

WHEREFORE, Defendant, Clearfield Hospital, respectfully requests that the Court enter an Order sustaining its Preliminary Objections as set forth above.

Respectfully submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE &  
SCHMITT

  
Attorney for Defendant  
Clearfield Hospital

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(814) 696-9399 Fax

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WILLIAM A. SMITH  
PROBATIONARY  
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CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
)  
)  
) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading:  
) PRELIMINARY OBJECTIONS  
) TO PLAINTIFF'S COMPLAINT  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
)  
) Court I.D. No.: 06787  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 8/14/01

FILED

AUG 14 2001

William A. Shaw  
Notary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

**PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT FILED  
ON BEHALF OF DEFENDANT ROBERTO LUNA, M.D.**

AND NOW comes the Defendant, Roberto Luna, M.D., by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Preliminary Objections to Plaintiff's Complaint, as follows:

**I. Relevant Factual and Procedural History**

1. The within medical malpractice action was commenced by way of Writ of Summons filed with the Clearfield County Court of Common Pleas on June 27, 2001.
2. Following service of an Executed Rule, Plaintiff came forward with her Complaint on August 1, 2001.
3. Plaintiff's Complaint concerns general allegations of negligence associated with the time period leading up to, and including, the performance of a total abdominal hysterectomy on December 12, 1985, by Defendant Drs. Tagala and Luna. (See Complaint at ¶¶ 6-10).
4. In response to Plaintiff's Complaint, Defendant Dr. Luna files Preliminary Objections upon the following grounds: (i) Demurrer / Motion to Dismiss Plaintiff's Complaint as Time-Barred by the Statute of Limitations Contained at 42 Pa.C.S. §5524(2); (ii) Demurrer /

Motion to Dismiss Plaintiff's Count VII Claim for Punitive Damages for Failing to State a Claim upon Which Relief May Be Granted; (iii) Demurrer / Motion to Dismiss Plaintiff's Count IV Claim of Informed Consent for Failing to State a Claim upon Which Relief May Be Granted; (iv) Motion to Strike / Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a); and, (v) Motion to Strike Plaintiff's Complaint for Failure to Provide a Proper Verification Pursuant to Pa.R.C.P. 1024.

**I. Demurrer / Motion to Dismiss Plaintiff's Complaint as Time-Barred by the Statute of Limitations Contained at 42 Pa.C.S. §5524(2)**

5. Paragraphs 1 through 4 are incorporated by reference as though set forth at length herein.

6. As stated, the Plaintiff initiated this cause of action by way of Writ of Summons that was filed with the Clearfield County Court of Common Pleas on June 27, 2001.

7. As to Defendant, Dr. Luna, the Plaintiff asserts claims for Medical Negligence (Count III) and a Breach of the Doctrine of Informed Consent (Count IV) arising out of a June 26, 1985 D&C biopsy, laparoscopy and catherization of the cervix and a December 12, 1985 total abdominal hysterectomy. (See Complaint at ¶¶ 6 and 9).

8. The Statute of Limitations applicable to both Medical Negligence and Informed Consent Claims appears at 42 Pa.C.S. § 5524(2) and provides, in pertinent part, as follows:

“§ 5524. Two year limitation

The following actions and proceedings **must be commenced within two years:**

- (1) An action for assault, **battery**, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.

- (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another. . .

See 42 Pa.C.S. § 5524 (emphasis and underlining supplied).

9. Based upon the foregoing, and insofar as Plaintiff's Complaint reflects the underlying "date of injury" to be no later than December 12, 1985, Plaintiff was required to file the present Complaint on or before December 12, 1987.

10. Because Plaintiff's Writ of Summons was not filed until June 27, 2001 (over thirteen years after the expiration of the Statute of Limitations), the Plaintiff's Complaint is barred by way of straightforward application of 42 Pa.C.S. § 5524.

WHEREFORE, Defendant, Dr. Luna, respectfully requests that the within Demurrer be granted, and that the Plaintiff's Complaint be dismissed, with prejudice, for being time-barred pursuant to the Statute of Limitations contained at 42 Pa.C.S. § 5524.

**II. Demurrer: Failure to State a Claim upon Which Relief May Be Granted - Plaintiff's Count VII Claim for Punitive Damages as to Defendant Dr. Luna**

11. Paragraphs 1 through 10 are incorporated by reference as though set forth at length herein.

12. Although, as a matter of law, all claims against Defendant, Dr. Luna, must be dismissed on the basis of the expiration of the applicable Statute of Limitations, the Rules of Civil Procedure provide that all Preliminary Objections must be raised at the same time, and, therefore, the following additional Objections are stated out of an overabundance of caution.

13. Within Count VII of the Complaint, Plaintiff asserts a claim of “punitive damages” as to Dr. Luna based upon vague and conclusory allegations of “reckless and/or willful and/or outrageous conduct.” (See Complaint at Count VII, ¶¶ 64-66).

14. Such allegations are based upon claims that Dr. Luna performed and/or assisted in a surgical procedure that was “unnecessary and/or contraindicated” and/or performed and/or assisted in said procedure “without adequate diagnosis or adequate exploration of alternative treatment.” (See Complaint at ¶¶ 65-66).

15. The foregoing allegations, even if taken as true, do not entitle Plaintiff to pursue a claim for punitive damages, but, to the contrary, state a cause of action sounding only in ordinary medical malpractice, at best.

16. The Pennsylvania Supreme Court has adopted §908(2) of the Restatement (Second) of Torts which permits punitive damages only "for conduct that is 'outrageous because of the defendant's evil motives or his reckless indifference to the rights of others.'" Rizzo v. Haines, 520 Pa. 484, 555 A.2d 58 (1989)(quoting Restatement (Second) of Torts §908(2)).

17. In medical malpractice actions, the question is: "whether there has been sufficiently aggravated conduct contrary to the plaintiffs' interests, involving bad motive or reckless indifference, to justify the special sanction of punitive damages." Medvecz v. Choi, 569 F.2d 1221 (3rd. Cir. 1977).

18. Punitive damages are not to be awarded for "misconduct which constitutes ordinary negligence such as inadvertence, mistake, and errors in judgment." McDaniel v. Merck, 367 Pa.Super. 600, 533 A.2d 436 (1987)(citing Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088 (1985)).

19. Furthermore, the Health Care Services Malpractice Act of 1975, P.L. 390, No. 111, 40 P.S. §1301, et. seq., specifies that “**A showing of gross negligence is insufficient to support an award of punitive damages.**” 40 P.S. §1301.812-A.

20. The Plaintiff’s Complaint allegations demonstrate that, per the law of punitive damages in this Commonwealth, the Plaintiff has failed to make allegations of sufficiently egregious conduct which, even if taken as true, would support an award of punitive damages.

21. Count VII of the Plaintiff’s Complaint should be stricken because the Plaintiff has not pled, with specificity, any factual averments that demonstrate the type of “evil motives” and/or “egregious conduct,” which is necessary to support a claim for punitive damages.

WHEREFORE, Defendant, Dr. Luna, respectfully requests that this Honorable Court dismiss, with prejudice, Plaintiff’s Count VII claim for punitive damages and any and all allegations of “reckless and/or willful and/or outrageous conduct” against Dr. Luna.

**III. Demurrer: Failure to State a Claim upon Which Relief May Be Granted - Plaintiff’s Count IV Claim for Informed Consent as to Defendant Dr. Luna**

22. Paragraphs 1 through 21 are incorporated by reference as though set forth at length herein.

23. Within Count IV of Plaintiff’s Complaint, an “Informed Consent / Battery” claim is raised as to Defendant Dr. Luna

24. With respect to Plaintiff’s Count IV claim, Plaintiff alleges the following:

“42. Defendant Luna, M.D., recommended radical **surgical procedures** as aforesaid to be performed on the plaintiff Rachel Traveny when such procedures were unnecessary and/or contraindicated.

43. At no time did defendant Luna, M.D., prior to said **procedures**, adequately or sufficiently advise or inform the plaintiff **or her family** of the actual necessity for the surgical **procedures** recommended and performed on plaintiff and/or the risks of injury associated with the surgical **procedures** and/or

injuries and complications resulting from said **procedures** which could occur, were possible, probable or likely.

44. Defendant Luna, M.D., did not inform plaintiff **or his [sic] family** of defendant's limitation in terms of **expertise and ability** to diagnose or treat plaintiff's condition.

45. Defendant Luna, M.D., failed to explain to the plaintiff **or her family** of alternative modalities of treatment such as conservative and medical care versus operative intervention and/or less radical operative intervention and also failing to explain to plaintiff the basis for the operative **procedures** recommended by the defendant.

46. Defendant Luna, M.D., failed to tailor any explanations to plaintiff's ability to comprehend."

(See Complaint at Count IV, ¶¶ 42-46).

25. Under Pennsylvania Law, claims for a breach in the doctrine of informed consent rest solely with the patient undergoing a surgical procedure, and not with the "family" of said patient as pled within Paragraphs 43-45 of Plaintiff's Complaint. See i.e. Sinclair by Sinclair v. Block, 534 Pa. 563, 633 A.2d 1137, 1140 (1993)("[t]he informed consent doctrine requires physicians to provide **patients** with "material information necessary to determine whether to proceed with the surgical or operative procedure or to remain in the present condition").

26. Furthermore, and in derogation of that pled within Paragraph 44 of Plaintiff's Complaint, the Pennsylvania Supreme Court has held that "evidence of a physician's personal characteristics and experience is irrelevant to an informed consent claim." See Duttry v. Patterson, 771 A.2d 1255, 1259 (Pa. May 22, 2001).

27. In addition to the foregoing, it is entirely unclear as to whether Plaintiff is asserting a Breach of Informed Claim as to the procedure that Plaintiff allegedly underwent on June 26, 1985, or December 12, 1985, or both. (See Complaint at ¶¶ 6 and 9).

28. Either way, Plaintiff has failed to plead facts which support her Count IV claim of “Informed Consent / Battery” as to Dr. Luna where Plaintiff has failed to provide proper notification as to which surgical procedures Dr. Luna allegedly failed to obtain proper informed consent and fails to provide any factual indication as to what information was not provided to Plaintiff.

29. Based on the foregoing, Plaintiff has failed to state a claim upon which relief can be granted as to the Count IV claim of “Informed Consent / Battery” and said claim must, therefore, be dismissed from Plaintiff’s Complaint, with prejudice.

**IV. Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a)**

30. Paragraphs 1 through 29 are incorporated by reference as though set forth at length herein.

31. Pennsylvania Rule of Civil Procedure 1019(a) requires that the material facts on which a cause of action or defense is based be stated in concise and summary form.

32. Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

33. The Defendant raises preliminary objections on the basis that various allegations within Plaintiff’s Complaint are overly broad, duplicative, vague and insufficiently specific.

34. Specifically, those paragraphs and/or subparagraphs which are being objected to are as follows [objectionable phrasing emphasized in bold, with arguments in support of Defendant’s position provided in brackets]:

“34. The losses and damages sustained by plaintiff was the direct and proximate result of the negligence and carelessness of defendant Luna, M.D., either directly or **through agents, servants, and employees or other representatives**, in the following particulars:

[Plaintiff improperly seeks to impute liability to Dr. Luna for the acts and/or omissions of unnamed “agents, servants, and employees or other representatives]

(a) In performing a complete hysterectomy and bilateral salpingo-oophorectomy and the **other surgical procedures** on the plaintiff Rachel Traveny **which were unnecessary, not indicated and/or contraindicated;**

[Plaintiff provides no specific indication as to why the referenced “surgical procedures” were “unnecessary, not indicated and/or contraindicated;” and, fails to define and/or limit what is meant by “other surgical procedures”]

(b) In failing to **adequately, properly, completely and/or timely render a correct diagnosis** of plaintiff’s **condition** and **provide treatment** to plaintiff;

[Plaintiff fails to indicate the specific ways or manner in which Dr. Luna failed to “adequately, properly, completely and/or timely render a correct diagnosis” of plaintiff’s “condition; fails to specifically indicate what “condition” is being referenced; and, includes the easily expandable, yet totally undefined, allegation that Dr. Luna failed to “provide treatment” to plaintiff]

(c) In failing to **timely diagnose and in misdiagnosing the signs and symptoms** of endometriosis and/or the **true nature and extent of plaintiff’s condition;**

[Plaintiff fails to indicate the specific ways or manner in which Dr. Luna failed to “timely and/or correctly diagnose” the signs and symptoms of endometriosis; fails to indicate the “signs and symptoms” of which Plaintiff references; fails to indicate what Dr. Luna should have done to “timely diagnose and/or correctly diagnose the signs and symptoms of endometriosis;” and, includes the vague averment regarding the “true nature and extent of plaintiff’s condition”]

(d) In continuing to **care for and/or treat and/or attempt to care for and/or treat plaintiff** when defendant knew or reasonably should have known that **the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary;**

[Plaintiff fails to indicate what specific aspects of Dr. Luna’s care was “inadequate, improper, unwarranted, medically contraindicated, outmoded and/or unnecessary;” and, fails to provide any specific indication as to how, or in what manner, Dr. Luna’s care was “inadequate, improper, unwarranted, medically contraindicated, outmoded and/or unnecessary”]



(e) In failing to perform a **complete and thorough evaluation of patient's condition** prior to **procedures performed** and therefore, failing to make a **sound decision as to the necessity and advisability for the procedures undertaken by the defendants**;

[Plaintiff fails to indicate the specific respects in which Dr. Luna failed to "perform a complete and thorough evaluation;" fails to indicate what "condition" and/or "procedures" Plaintiff is referencing; and, fails to indicate the ways in which Dr. Luna's decision to undertake the alleged "procedures" was "unsound" and/or "unnecessary"]

(f) In failing to **timely diagnose and recommend and conduct further testing** or recommend and initiate **alternative treatment of plaintiff's condition** prior to the hospital **procedures** performed;

[Plaintiff fails to indicate how, or in what ways, Dr. Luna failed to "timely diagnose and recommend and conduct further testing;" fails to indicate what "further testing" should have been done; fails to indicate the "alternative treatment" that should have been attempted; and, fails to indicate what "condition" and/or "procedures" Plaintiff is referencing]

(g) In recommending a hysterectomy and bilateral salpingo-oophorectomy and the **other surgical procedures** when defendant knew or should have known such **procedure was unnecessary and/or contraindicated**;

[Plaintiff fails to specify the "other surgical procedures" that are vaguely referenced; and, fails to indicate why, or in what specific ways, the procedures performed were "unnecessary and/or contraindicated"]

(h) In failing to **adequately, properly and/or timely treat** plaintiff's endometriosis;

[Plaintiff fails to indicate the specific ways in which Dr. Luna failed to "adequately, properly and/or timely treat" plaintiff's endometriosis; and, fails to indicate the specific respects in which the treatment actually provided was in any way "inadequate, improper and/or untimely"]

(i) In **failing to act** upon a diagnosis of pre-surgical findings on diagnostic / pathology results;

[Plaintiff fails to indicate how, or in what ways, Dr. Luna "failed to act" upon the "diagnosis or pre-surgical findings and/or results," etc.; fails to indicate what it was about said "findings and/or results" that should have caused Dr. Luna to "act;" and, fails to indicate what it is that Dr. Luna should have, but allegedly failed to do, in response to said "findings and/or results"].

(j) In **ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff's condition and of the true cause of plaintiff's condition/symptoms;**

[Plaintiff fails to indicate the specific ways in which Dr. Luna "ignored and/or failed" to "adequately, properly, completely and/or timely" recognize "clear medical evidence of plaintiff's condition;" provides no indication as to what "clear medical evidence" and/or "condition" that Plaintiff is referencing; fails to indicate the specific respects in which the treatment actually provided was in any way "inadequate, improper, incomplete and/or untimely;" and, fails to define the vague reference to "true cause" of plaintiff's condition/symptoms]

(k) In failing to **promptly and timely order sufficient, proper and necessary diagnostic studies to assess the degree of severity of plaintiff's medical condition and particularly her underlying endometriosis and with regard to the complaints of the plaintiff and to access and to diagnose the true nature and cause of plaintiff's symptoms and conditions as heretofore set forth;**

[Plaintiff fails to indicate what "diagnostic studies" Dr. Luna failed to "promptly and timely order;" fails to indicate how the studies actually ordered were in any way deficient; fails to define the vague phrase "plaintiff's medical condition;" and, fails to define and/or limit the vague phrase "to access and to diagnose the true nature of plaintiff's symptoms and conditions"]

(l) In failing to **adequately, properly completely and/or timely interpret the symptomatology of plaintiff, the results, examinations and/or tests conducted for or with respect to plaintiff and/or failing to review and act upon those test results;**

[Plaintiff fails to indicate the specific respects in which Dr. Luna failed to "adequately, properly, completely and/or timely interpret the symptomatology of plaintiff;" and/or the "results, examinations and/or tests conducted on plaintiff;" fails to indicate the ways in which the interpretations actually rendered were in any way deficient; fails to indicate what "symptoms, results, examinations and/or tests" that Dr. Luna failed to interpret; and, fails to indicate how, or in what ways, Dr. Luna failed to "review and/or act upon" said test results]

(m) In failing to **adequately, properly, completely and/or timely act on the basis of the results of the tests of examinations conducted on or tests conducted for or with respect to plaintiff;**

[Plaintiff fails to indicate the specific respects in which Dr. Luna failed to "adequately, properly, completely and/or timely act on the basis of the results of

the tests of examinations conducted with respect to plaintiff; fails to indicate the ways in which the actions of Dr. Luna were in any way deficient; fails to indicate what “tests and/or examinations” that Dr. Luna failed to act upon]

(n) In **misinterpreting the results of the tests and/or examinations conducted** on or with respect to plaintiff and/or **failing to review and act upon** those test results;

[Plaintiff fails to indicate the specific respects in which Dr. Luna “misinterpreted the results of the tests and/or examinations conducted with respect to plaintiff;” fails to indicate the ways in which the interpretations of Dr. Luna were in any way deficient; fails to indicate the specific “tests and/or examinations” that Plaintiff references; and, fails to indicate the specific respects in which Dr. Luna failed to “review and act upon” said test results]

(o) In failing to **make and conduct tests and examinations** that would have disclosed the **true nature and extent of plaintiff’s condition**;

[Plaintiff fails to indicate what “tests and examinations” Dr. Luna should have, but allegedly, failed to “make and conduct;” fails to indicate how the tests and examinations” actually ordered were in any way deficient; and, fails to define the vague phrase regarding the “true nature and extent of plaintiff’s condition”]

(p) In failing to **know and/or develop accepted and proper differential diagnosis** in the care and treatment of plaintiff;

[Plaintiff fails to indicate how, or in what ways, the differential diagnosis rendered was in any way deficient; and, fails to indicate what an “accepted and proper” differential diagnosis would have included”]

(q) In failing to obtain **appropriate specialty consultations** for plaintiff’s **condition** and/or to **acquire proper information to diagnose, treat and/or care for plaintiff**;

[Plaintiff fails to indicate what specialties should have been consulted; fails to indicate the respects of plaintiff’s treatment that mandated such consultation; and, fails to indicate the “proper information” that should have been acquired to “diagnose, treat and/or cure” plaintiff]

(r) In failing to obtain **timely and appropriate diagnostic tests and specialty consultations** to investigate the cause of the complaints of the plaintiff;

[Plaintiff fails to indicate the “diagnostic tests” that should have been obtained; fails to indicate how, or in what ways, the “tests” actually obtained were deficient; fails to indicate what specialities should have been consulted; and, fails to indicate the respects of plaintiff’s treatment that mandated such consultation]

(s) In failing to **institute and/or consider other forms of treatment** for plaintiff’s condition such as **medical treatment**, adjustment of hormone therapy or alternative hormone medications and/or **less radical surgical procedures** prior to recommending and performing the type of surgery performed by defendant[s];

[Plaintiff fails to provide specific indication and/or in any way limit the “other forms of treatment” that should have been pursued in plaintiff’s care; and, fails to define and/or limit what is meant by the vague terms “medical treatment” and/or “less radical surgical procedures”]

(t) In failing to **acquire the proper knowledge, skill, education and credentials** to perform the said **procedures** and to treat plaintiff’s **conditions**;

[Plaintiff fails to provide specific factual criticism as to respects in which Dr. Luna’s care was improper and/or allegedly negligent; and, fails to indicate and/or limit what is meant by vague reference to “procedures” and/or “conditions”]

....

(v) In failing to **adequately, properly, completely and/or timely provide proper and/or adequate and/or other diagnostic equipment**;

[Plaintiff fails to indicate how, or in what ways, Dr. Luna failed to “adequately, properly, completely and/or timely provide proper and/or adequate and/or other diagnostic equipment;” fails to indicate the ways in which the equipment actually used by Dr. Luna was in any way deficient; fails to indicate what “diagnostic equipment” Dr. Luna allegedly failed to employ]

(w) In failing to refer plaintiff’s **test results** to a **physician or other health care provider who could properly treat and care for plaintiff** and/or **properly interpret the act upon the test results**;

[Plaintiff fails to specify the “test results” that should have been forwarded to another “physician and/or health care provider;” fails to indicate the type or specialty of “physicians and/or other health care providers” that should have been considered; and, fails to indicate why and/or for what reason said “tests results” needed to be forwarded to another “physician and/or health care provider”]

(x) In increasing the plaintiff's risk of harm by **depriving plaintiff of all available medical and/or less radical surgical intervention** for the treatment of plaintiff's **true medical condition**;

[Plaintiff fails to indicate how, or in what ways, Dr. Luna "deprived" plaintiff of all "available medical and/or less radical surgical intervention;" fails to provide specific indication and/or in any way limit the "available medical and/or less radical surgical intervention" that should have been employed in plaintiff's case; and, fails to define and/or limit what is meant by the vague term "true medical condition"]

(y) In failing to consult with an **oncologist, pathologist, surgeon, radiologist, gynecologist, gastroenterologist and other specialist** based upon plaintiff's **medical history and subjective complaints and objective findings**;

[Plaintiff fails to indicate the specific respect of "plaintiff's history, complaints and findings" that required the consultation of an "oncologist, pathologist, surgeon, radiologist, gynecologist, gastroenterologist and other specialist;" includes the readily expandable phrase "and other specialist;" and, fails to indicate why and/or for what reason each of the individual specialists identified needed to be consulted]

(z) In failing to **provide or recommend further treatment to plaintiff**, which, **under the circumstances**, would have prevented or reduced the likelihood that plaintiff would require a hysterectomy, bilateral salpingo-oophorectomy;

[Plaintiff fails to indicate what "further treatment" should have been "provided and/or recommended;" fails to indicate the specific respects in which the treatment actually rendered was in any way deficient; and fails to define and/or otherwise limit what is meant by the vague reference to "under the circumstances"]

(aa) In **misdiagnosing** plaintiff Rachel Traveny with cancer;

[Plaintiff fails to provide any indication as to how, or in what ways, Dr. Luna misdiagnosed plaintiff with cancer; fails to indicate what Dr. Luna could or should have done to avoid said misdiagnosis; and, fails to provide sufficient factual basis for the criticism alleged]

(bb) In **prescribing hormone therapy and the type of hormone therapy** initiated by the defendant prior to the **surgical procedures** undertaken by the defendant;

[Plaintiff fails to indicate how, or in what ways, the “hormone therapy and/or type of hormone therapy” allegedly prescribed was in any way improper and/or contraindicated; and, fails to define and/or otherwise limit what is meant by term “surgical procedures”]

(cc) In **ignoring or failing to adequately, properly, completely and/or timely recognize the clear medical evidence of plaintiff’s condition** and of the **severity of plaintiff’s condition**;

[Plaintiff fails to indicate the specific ways in which Dr. Luna “ignored and/or failed” to “adequately, properly, completely and/or timely” recognize “clear medical evidence of plaintiff’s condition;” provides no indication as to what “clear medical evidence” and/or “condition” that Plaintiff is referencing; fails to indicate the specific respects in which the treatment actually provided was in any way “inadequate, improper, incomplete and/or untimely;” and, fails to define the vague reference to “the severity” of plaintiff’s condition]

(dd) In **delaying treatment** to plaintiff which would have **reduced or prevented progression of plaintiff’s condition**;

[Plaintiff fails to indicate the types and/or forms of “treatment” that were delayed in the plaintiff’s case; fails to indicate how such “treatment” would have “reduced or prevented progression of plaintiff’s condition;” and, fails to define and/or otherwise limits what is meant by the vague reference to “plaintiff’s condition”]

(ee) In **failing to take an adequate history** from the plaintiff;

[Plaintiff fails to indicate the ways and/or specific respects in which the history taken from plaintiff was “inadequate”]

(ff) In **failing to properly recommend or perform adequate follow up care and treatment**;

[Plaintiff fails to indicate the types of “follow up care and treatment” that should have been “recommended or performed;” fails to indicate the specific respects in which the “follow up” care actually “recommended or performed” was improper]

(gg) In **failing to salvage plaintiff’s reproductive organs**;

[Plaintiff fails to provide any indication as to how a failure to “salvage plaintiff’s reproductive organs” amounted to improper care and treatment in this case; fails to define what is meant by the vague term “salvage;” and, fails to provide any indication as to why Dr. Luna would have been required “salvage plaintiff’s reproductive organs”]

(hh) In failing to follow the **policies and procedures** of the medical service set forth by the medical staff practicing at defendant Clearfield Hospital;

[Plaintiff fails to provide any indication as to the specific “policies and procedures” that Dr. Luna allegedly failed to follow]

(ii) In failing to perform an **adequate physical examination** of the plaintiff;

[Plaintiff fails to indicate the ways and/or specific respects in which the physical examination performed on plaintiff was “inadequate”]

(jj) In failing to **instruct, train, hire, select or adequately supervise its agents, servants or employees** in the **proper interpretation of symptomatology and results of examination and/or testing** to recognize signs and symptoms of cancer and endometriosis;

[Plaintiff improperly seeks to impute liability to Dr. Luna for the acts and/or omissions of unnamed “agents, servants, and employees;” Plaintiff fails to indicate how, or in what ways, such unidentified providers were improperly “instructed, trained, hired, selected or adequately supervised;” and, fails to specify the “results of examination and/or testing” that was “improperly interpreted”]

(kk) In failing to **put in place procedures and/or standing orders for the proper management of individuals** who present with signs and symptoms of abdominal/pelvic pain, menstrual bleeding to ensure a correct diagnosis and initiation of **medical and/or less radical procedures** for plaintiff’s **condition** prior to the initiation of **surgical procedures** performed;

[Plaintiff fails to indicate what is meant by the vague phrase “proper management;” fails to indicate how the orders actually put in place were in any way deficient; fails to indicate what is meant by the vague phrase “medical and/or less radical procedures,” “plaintiff’s condition,” and “surgical procedures”]

(ll) In failing to **put in place procedures and/or standing orders for the transmission, review and action upon results of diagnostic testing/observations and/or the recommendations for further testing;** and

[Plaintiff fails to indicate what is meant by the vague phrase “transmission, review and action upon results of diagnostic testing/observations and/or recommendations of further testing;” and, fails to indicate how, or in what ways, the actual “transmission, review and action upon results of testing/observations,” or “recommendations for further testing” was in any way deficient or improper]

(mm) In failing to **monitor and observe plaintiff's condition with a sufficient frequency or in a sufficient manner**, or in a reasonable manner, when defendant knew, or should have known, that **frequent and proper monitoring and observation of the plaintiff's condition was necessary to diagnose and treat plaintiff's underlying condition** and would thereby reduce the risk that plaintiff would require surgical intervention or radical surgical intervention.

[Plaintiff fails to indicate the specific respects in which Dr. Luna failed to "monitor and observe plaintiff's condition" in a "reasonable manner;" fails to indicate what a "sufficiently frequent and/or sufficient manner" would have entailed; fails to define and/or otherwise limit what is meant by vague phrase "plaintiff's underlying condition"]

35. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her **agents, servants and/or employees**, plaintiff suffered severe and serious injury as follows:

[Plaintiff improperly seeks to impute liability to Dr. Luna for the acts and/or omissions of unnamed "agents, servants, and employees or other representatives"]

....

(n) **Injuries as set forth more fully in plaintiff's medical records and reports.**

[Plaintiff includes the entirely over broad and easily expandable phrase "injuries as set forth more fully in plaintiff's medical records and reports"]

....

47. As the direct, legal and proximate result of the careless and/or negligent conduct of defendant, and by and through her **agents, servants and/or employees**, plaintiff suffered severe and serious injury as follows:

[Plaintiff improperly seeks to impute liability to Dr. Luna for the acts and/or omissions of unnamed "agents, servants, and employees or other representatives"]

....

(n) **Injuries as set forth more fully in plaintiff's medical records and reports.**

[Plaintiff includes the entirely over broad and easily expandable phrase "injuries as set forth more fully in plaintiff's medical records and reports"]



(See Complaint at Paragraph 34, including subparagraphs (a) through (t), (v) through (z), (bb) through (mm); Paragraph 35, including subparagraph (n); Paragraph 47, including subparagraph (n)).

35. The above-quoted, objected-to allegations of Plaintiff's Complaint contain boilerplate, repetitive, and prejudicially vague allegations of negligence, which are improper, imprecise, and devoid of factual support. As such, they are in complete derogation of the well settled fact pleading rules of this Commonwealth and must be stricken from the Plaintiff's Complaint, thereby permitting Dr. Luna to prepare a full and complete defense to the claims currently being raised against him.

36. The foregoing objected-to allegations are insufficient because it is generally understood, that in **any** medical malpractice lawsuit the alleged negligent act will generally occur during the physician's examination, diagnosis, or treatment of the patient. In failing to clearly identify how Dr. Luna was allegedly negligent in this **particular instance**, and with this **particular patient**, the Plaintiff's Complaint further undermines the policies supporting the fact-pleading rules of this Commonwealth, to Dr. Luna's substantial prejudice.

37. Moreover, the objected-to allegations of Plaintiff's Complaint are in direct violation of Appellate Court case law, which requires those asserting an agency relationship to allege, as a minimum, facts which:

- "1. identify the agent by name or appropriate description; and
2. set forth the agent's authority and how the tortious acts of the agent either fall within the scope of that authority or if authorized were ratified by the principal."

See Alumni Association v. Sullivan v. Kappa Chapter of Sigma Chi Fraternity, 369 Pa. Super. 596, 535 A.2d 1095 (1987); Willinger v. Mercy Catholic Medical Center, 241 Pa. Super. 456, 362 A.2d 280 (1976); Daro v. Keystone 5, 10, 25 One Dollar Stores, Inc., 50 Dauph. Co. 134 (1949).

38. Without Plaintiff specifically identifying the identities of the unnamed “agents, servants, and employees or other representatives” referenced within Paragraphs 34, 35, and 47, Dr. Luna is without notice of the specific allegations being brought against him and of the individual persons and/or providers involved in the care that is being criticized.

39. In all, the objected-to allegations, referenced herein above, fail to comply with Pennsylvania Rule of Civil Procedure No. 1019(a), as well as, the principals enunciated in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), and other cases.

40. If these paragraphs are not stricken, or properly re-pled, the Defendant will be forced to defend against any conceivable theory of malpractice at trial.

41. Because the challenged paragraphs and subparagraphs fail to sufficiently apprise the Defendant of the tortious conduct which the Plaintiff asserts, the Defendant is unable to appropriately respond or adequately prepare a defense to such allegations.

42. Furthermore, the foregoing factual deficiencies of the challenged allegations are prejudicial to the Defendant inasmuch as his inability to prepare a defense to these allegations may result in waiver of various defenses and objections pursuant to Pa. R.C.P. 1032.

WHEREFORE, Defendant, Dr. Luna, respectfully requests that this Motion to Strike be granted and that this Honorable Court enter an Order striking the following paragraphs and subparagraphs from Plaintiff’s Complaint: Paragraph 34, including subparagraphs (a) through (t), (v) through (z), (bb) through (mm); Paragraph 35, including subparagraph (n); Paragraph 47, including subparagraph (n).

**V. MOTION TO STRIKE PLAINTIFF'S COMPLAINT FOR FAILURE TO PROVIDE A PROPER VERIFICATION PURSUANT TO Pa.R.C.P. 1024**

43. Paragraphs 1 through 42 are incorporated by reference as though set forth at length herein.

44. Pennsylvania Rule of Civil Procedure 1024(a) requires that every pleading containing an averment of fact be verified.

45. "The verification **shall** be made by one or more of the **parties** filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside of the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading." Pa.R.C.P. 1024(c)(emphasis supplied).

46. The Plaintiff, Rachel Traveny, did not verify the Complaint in this action.

47. Rather, Plaintiff's Complaint contains only the Verification of Philip A. Fabiano, Esquire, Plaintiff's attorney, who is not a party to this action.

48. While Mr. Fabiano's Verification indicates that the "verification of the plaintiff will be obtained and filed with the court at a later date," there is no indication as to why Plaintiff was and/or remains unable to provide a proper Verification for the Complaint, or for that matter, when such a Verification will indeed be forthcoming.

49. Accordingly, it is respectfully requested that this Honorable Court strike the Plaintiff's Complaint for lack of proper Verification and/or require Plaintiff to promptly file a proper Verification to Plaintiff's Complaint.

WHEREFORE, Defendant, Dr. Luna, respectfully requests that the within Motion to Strike be granted, and that this Honorable Court either strike Plaintiff's Complaint for lack of a proper Verification and/or require Plaintiff to promptly file a proper Verification to Plaintiff's Complaint.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO  
RICHARD K. LAWS  
Attorneys for Defendant  
Roberto Luna, M.D.  
811 University Drive  
State College, PA 16801  
(814)238-4926

Dated: 8/14/01

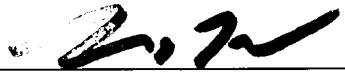
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT FILED ON BEHALF OF DEFENDANT ROBERTO LUNA, M.D.**, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 14th day of August, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219, Walter F. Wall, 120 Lakemont Park Boulevard, Altoona, PA 16602 and Michael Sosnowski, P.O. Box 533, Hollidaysburg, PA 16648.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
RICHARD K. LAWS  
Attorneys for Defendant  
Roberto Luna, M.D.

FILED  
m/ 1:06 /JP NO CC  
AUG 15 2001 E  
HCA

William A. Shaw  
Prothonotary

11/15/01

CPA

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

**PLAINTIFF'S REPLY TO  
PRELIMINARY OBJECTIONS OF  
DEFENDANT ROBERTO LUNA, M.D.**

Defendants.

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

AUG 31 2001

ml:441noc  
William A. Shaw  
Prothonotary



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S REPLY TO PRELIMINARY OBJECTIONS  
OF DEFENDANT ROBERTO LUNA, M.D.**

AND NOW, comes the plaintiff, by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and hereby files the following Reply to Preliminary Objections of Defendant Roberto Luna, M.D. as follows:

1-8. Admitted.

9-10. Denied. By way of preliminary answer, defendant's Preliminary Objection, claiming the Complaint must be dismissed since it is time barred, is misplaced. A statute of limitations defense is an affirmative defense which must be plead in New Matter pursuant to Pennsylvania Rule of Civil Procedure 1030.

Pennsylvania Rule Civil Procedure 1028, et seq., specifically states that the statute of limitations may not be raised in Preliminary Objections. By way of further answer, it is denied that the plaintiff's Complaint must be filed on or before December 12, 1987. To the contrary, Pennsylvania recognizes what is known as "the discovery rule" which extends the time period for a plaintiff to enter a lawsuit to within two year of



the date when the plaintiff knew or should have known of the negligence. See gen.: Cathcart v. Keene Indus. Insulation, 324 Pa. Super. 123, 471 A.2d 493 (1984).

11-21. Denied. It is denied that plaintiff's punitive damage claim is based upon "vague and conclusory allegations." To the contrary, plaintiff specifically alleges that the total hysterectomy performed upon Rachel Traveny was done without a specific diagnosis of her condition and that the surgery was, in fact, unnecessary and that the defendant knew it was unnecessary. The punitive damage claim is sufficiently pled and appropriate in this case since it is alleged that the defendant was aware of the circumstances of the surgery he about to be perform, he knew it was unnecessary and proceeded despite that awareness. Defendant performed an act of unreasonable character, and in disregard of the consequences to a 24-year old woman who was about to lose her reproductive organs.

22-24. Admitted.

25. Denied. It is specifically denied that the plaintiff alleges it was necessary for the defendant to obtain the informed consent of Rachel Traveny's family. To the contrary, the defendant failed to obtain the informed consent of Rachel Traveny before performing an unnecessary surgery.

26. Denied. Rachel Traveny specifically inquired of the defendant regarding his qualifications to treat plaintiff's condition.

27-29. Denied. Plaintiff has properly set forth a claim based upon the defendant's failure to obtain the informed consent of Rachel Traveny. The surgical procedure at issue is the removal of plaintiff's reproductive organs.

30-32. Admitted.

33-42. Denied. It is specifically denied that the plaintiff has failed to set forth her claim with the required specificity. To the contrary, the plaintiff's allegations of negligence are clear and straightforward and permit the defendant to respond. By way of further reply, plaintiff has plead her injuries with sufficient specificity. Nonetheless, plaintiff's injuries are ongoing and plaintiff cannot be restricted at this stage of the litigation to set parameters regarding her injuries. Further, at this stage of the litigation, without an opportunity for discovery, the plaintiff cannot know what agents and servants or employees of the defendant participated or had input into her care. The defendant, who has access to the plaintiff's medical records knows who saw and/or participated in the care of the patient.

43-45. Admitted.

46. Denied. Plaintiff Rachel Traveny has filed a Verification to the Complaint.

47. The Verification of the plaintiff's counsel was timely substituted with the Verification by the plaintiff prior to the defendant's filing Preliminary Objections.

48. Denied. The Attorney Verification attached to the Complaint specifically set forth that the Verification of the Complaint by the plaintiff could not be obtained within the time required to file the pleading.

49. Denied. The defendant has provided no basis or authority that would permit this Court to impose the punitive sanction of dismissal of the plaintiff's Complaint merely because an Attorney Verification was attached at the time of the filing.

WHEREFORE, plaintiff respectfully requests this Honorable Court to overrule defendant's Preliminary Objections and to award judgment in favor of the plaintiff and against the defendant.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**ORDER**

AND NOW, to wit, this \_\_\_\_ day of \_\_\_\_\_, 2001, it is hereby  
ORDERED, ADJUDGED and DECREED that the Preliminary Objections of the Defendant  
Praxidio H. Tagala, M.D., are overruled with prejudice.

BY THE COURT

\_\_\_\_\_. J.

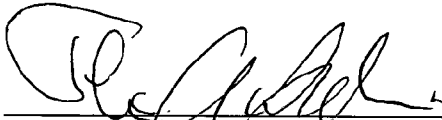
**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Reply to Preliminary Objections of Defendant Roberto Luna, M.D.** has been served this 27 day of August 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**

  
Philip A. Fabiano

CA

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

**PLAINTIFF'S REPLY TO  
PRELIMINARY OBJECTIONS OF  
DEFENDANT CLEARFIELD  
HOSPITAL**

Defendants.

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

AUG 31 2001

m/1149/noc  
William A. Shaw  
Prothonotary

*[Signature]*

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S REPLY TO PRELIMINARY OBJECTIONS  
OF DEFENDANT CLEARFIELD HOSPITAL**

AND NOW, comes the plaintiff, by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and hereby files the following Reply to Preliminary Objections of Defendant Clearfield Hospital. as follows:

1-4. Admitted.

5-6. Denied. It is specifically denied that the plaintiff's Complaint is impermissibly vague since it fails to precisely identify the "agents, servants and/or employees" of defendant Clearfield Hospital. Plaintiff has identified the dates and nature of the treatment rendered at defendant Clearfield Hospital. At this stage of the litigation, without the opportunity for discovery, it is impossible for the plaintiff determine which agents, servant, and/or employees were involved in the patient's care and/or which employees were involved in the implementation of the precise policies or standings orders which may have been involved in the plaintiff's care. It is the defendant who has the information and who examined, assisted and consulted in Ms.

Traveny's case and who supervised those individuals and who set the criteria for such examinations or consultations.

7-10. Denied. It is denied that the plaintiff's allegations set forth in paragraph 7 of the defendant's Preliminary Objections are vague or non-specific boilerplate. To the contrary, the allegations at issue are sufficiently specific to place the defendant on notice of what it must defend at time of trial.

WHEREFORE, plaintiff respectfully requests this Honorable Court to overrule defendant's Preliminary Objections and to award judgment in favor of the plaintiff and against the defendant.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", is written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**ORDER**

AND NOW, to wit, this \_\_\_\_ day of \_\_\_\_\_, 2001, it is hereby  
ORDERED, ADJUDGED and DECREED that the Preliminary Objections of the Defendant  
Praxidio H. Tagala, M.D., are overruled with prejudice.

BY THE COURT

\_\_\_\_\_. J.

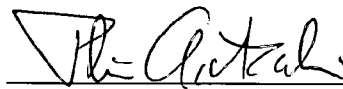
**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Reply to Preliminary Objections of Defendant Clearfield Hospital** has been served this 27 day of August 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**



Philip A. Fabiano

CP

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

**PLAINTIFF'S REPLY TO  
PRELIMINARY OBJECTIONS OF  
DEFENDANT PRAXIDIO H. TAGALA,  
M.D.**

Defendants.

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

AUG 31 2001

m/1:44/noce  
William A. Shaw  
Prothonotary



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S REPLY TO PRELIMINARY OBJECTIONS  
OF DEFENDANT PRAXIDIO H. TAGALA, M.D.**

AND NOW, comes the plaintiff, by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and hereby files the following Reply to Preliminary Objections of Defendant Praxidio H. Tagala, M.D. as follows:

1-4. Admitted.

5. Denied. It is specifically denied that plaintiff has not or more specifically must, set forth dates within the Complaint which would *prove* her right to maintain a cause of action within the statute of limitations. To the contrary, pursuant to Pennsylvania Rule of Civil Procedure 1019 the plaintiff must set forth her claim in a concise and summary fashion. Plaintiff is not responsible for anticipating and/or defending against the potential affirmative defenses of the defendant. By way of further reply, pursuant to the clear and unambiguous dictates of Pennsylvania Rule of Civil Procedures 1028, a statute of limitations defense may not be raised in Preliminary

Objections but rather it is an affirmative defense which can be only raised in New Matter.

6-7. Admitted.

8-9. Admitted in part and denied in part. The averments contained in paragraph 8 of the defendant's Preliminary Objections are admitted. In reply to paragraph 9 of the defendant's Preliminary Objections, it is specifically denied that the plaintiff at this stage of the litigation must identify each and every agent or servant who may have been involved in the patient's care. The plaintiff has filed a Complaint pursuant to Pennsylvania Rule of Civil Procedure 1019(a) in a concise and summary form which summarizes the plaintiff's claim. Defendant at this stage of the litigation is not in a position to know the identity of each and every agent or servant of the defendant who may have participated in her care. The defendant who has access to all of the plaintiff's medical records most precisely who saw the plaintiff and to whom the defendant may have delegated responsibilities for the plaintiff.

10-12. Denied. It is specifically denied that the plaintiff's Complaint is overly broad or contains boilerplate allegations which would permit the plaintiff to change the course of the litigation. To the contrary, the plaintiff's Complaint has set forth allegations against the defendant in a clear, specific, and concise manner which would permit the defendant to respond.

13-15. Admitted.

16. Denied. It is still specifically denied that the plaintiff is claiming that the defendant was responsible for gaining the informed consent of anyone aside from the plaintiff Rachel Traveny.

17. Admitted.

18-19. Denied. Plaintiff claim that the defendants failed to obtain her informed consent is clear and straightforward and plead with sufficient specificity. The defendant failed to obtain the informed consent of the plaintiff Rachel Traveny prior to performing a total hysterectomy.

20-23. Admitted.

24. Denied. It is denied that the plaintiff has failed to set forth sufficient facts to maintain a punitive damage claim against the defendant. To the contrary, the plaintiff claims if accepted as true for purposes of a demurrer show the degree of reckless and difference to the health and welfare of the plaintiff sufficient to support a punitive damage claim. Plaintiff alleges that the defendant e.g., performed unnecessary and contraindicated surgery without a diagnosis of the patient's condition and without exploration of alternative treatment especially in light of the radical nature of the surgery he performed.

25-27. Denied. It is denied that the plaintiff filed an Attorney's Verification without setting forth the reasons why the plaintiff was unable to verify the Complaint. To the contrary, the Attorney's Verification indicates that the Verification of the plaintiff could not be supplied in time prior to the filing of the Complaint. By way of further reply, it is specifically denied that Pennsylvania Rule of Civil Procedure 1024 would require the dismissal of a lawsuit under the circumstances for lack of Verification by the plaintiff. By way of further reply, the plaintiff has timely filed Verification to the Complaint.

28-31. Denied. It is denied that the plaintiff has violated Pennsylvania Rule of Civil Procedure 1028. By way of further reply, plaintiff has not incorporated allegations against other defendants against defendant Tagala, M.D.

WHEREFORE, plaintiff respectfully requests this Honorable Court to overrule defendant's Preliminary Objections and to award judgment in favor of the plaintiff and against the defendant.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", is written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**ORDER**

AND NOW, to wit, this \_\_\_\_ day of \_\_\_\_\_, 2001, it is hereby  
ORDERED, ADJUDGED and DECREED that the Preliminary Objections of the Defendant  
Praxidio H. Tagala, M.D., are overruled with prejudice.

BY THE COURT

\_\_\_\_\_. J.



**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Reply to**

**Preliminary Objections of Defendant Praxidio H. Tagala, M.D.**, has been served this

27 day of August 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**



Philip A. Fabiano

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

RACHEL TRAVENY

-vs-

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL

No. 01 - 1025 - CD

**ORDER**

NOW, this 28<sup>th</sup> day of September, 2001, this being the day and date set for argument into Preliminary Objections filed on behalf of Praxidio H. Tagala, M.D., Defendant above-named, it is the ORDER of this Court that said Objections shall be and are hereby sustained, that Plaintiff's claim for punitive damages be and are hereby dismissed, preserving in Plaintiff the right to reassert her claim upon presenting sufficient basis therefor. In all other respects, said Preliminary Objections shall be and are hereby continued until completion of discovery.

By the Court,

\_\_\_\_\_  
President Judge

**FILED**

SEP 28 2001

William A. Shaw  
Prothonotary

William A. Shaw  
Prothonotary

SEP 28 2001

FILED

1 cc

Sosnovsky, Fabiano,  
Black, Marchese



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

RACHEL TRAVENY

-vs-

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL

No. 01 – 1025 – CD

**ORDER**

NOW, this 28<sup>th</sup> day of September, 2001, this being the day and date set for argument into Preliminary Objections filed on behalf of Roberto Luna, M.D., Defendant above-named, it is the ORDER of this Court that said Objections shall be and are hereby sustained, that Plaintiff's claim for punitive damages be and are hereby dismissed, preserving in Plaintiff the right to reassert her claim upon presenting sufficient basis therefor. In all other respects, said Preliminary Objections shall be and are hereby continued until completion of discovery.

By the Court,

President Judge

**FILED**

SEP 28 2001

William A. Shaw  
Prothonotary

**FILED**

SEP 28 2001

William A. Shaw  
Prothonotary

ICC Sosnowski, Fabiano,  
Blast, Maierhofer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

RACHEL TRAVENY

-vs-

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL

No. 01 – 1025 – CD

**ORDER**

NOW, this 28<sup>th</sup> day of September, 2001, this being the day and date set for argument into Preliminary Objections filed on behalf of Clearfield Hospital, Defendant above-named, it is the ORDER of this Court that said Objections shall be and are hereby continued pending completion of discovery.

By the Court,

\_\_\_\_\_  
President Judge

**FILED**

SEP 28 2001

William A. Shaw  
Prothonotary

**FILED**  
074:00  
SEP 28 2001  
1 cc Sosnowski,  
Fabiano, Black,  
Maishoff  
William A. Shaw  
Prothonotary  
Key

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**PLAINTIFF'S NOTICE OF SERVICE**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

OCT 15 2001  
mjl:snoc  
A. Shaw  
Notary



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S NOTICE OF SERVICE OF DISCOVERY REQUESTS**

The undersigned hereby certifies that an original of the Interrogatories and Request for Production of Documents were served on **Michael Michael A. Sosnowski, Esquire, Pfaff, McIntyre, Dugas, Hartye & Schmitt, P.O. Box 533, Hollidaysburg, PA 16648-0533**, counsels for Clearfield Hospital this 8 day of October, 200,1 by U.S. mail, postage pre-paid.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES



Philip A. Fabiano  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Notice of Service of Discovery Requests** has been served this 8 day of October 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**

  
Philip A. Fabiano

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**PLAINTIFF'S NOTICE OF SERVICE**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

OCT 12 2001  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S NOTICE OF SERVICE OF DISCOVERY REQUESTS**

The undersigned hereby certifies that an original of the Interrogatories and Request for Production of Documents were served on **Walter Wall, Esquire, Meyer, Darragh, Buckler, Bebenek & Eck, 120 Lakemont Park Boulevard, Altoona, PA 16602** and **John Blasko, Esquire, McQuaide Blasko, 811 University Drive, State College, PA 16801**, counsels for Praxidio H. Tagala, M.D., and Roberto Luna, M.D.,, this 8 day of October, 200,1 by U.S. mail, postage pre-paid.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

  
Philip A. Fabiano  
Attorney for Plaintiff

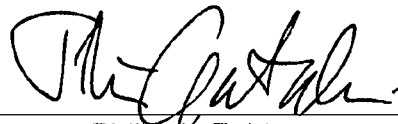
**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Notice of Service of Discovery Requests** has been served this 8 day of October 2001, by U.S. first-class mail, postage prepaid, to:

Walter Frederick Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801-6699  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Michael A. Sosnowski, Esquire  
Pfaff, McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
**Attorneys for Defendant**  
**Clearfield Hospital**



Philip A. Fabiano

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

01 – 1025 – CD

**ISSUE:**  
**ANSWER AND NEW MATTER**  
**TO COMPLAINT**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 – FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 17<sup>th</sup> DAY OF **OCTOBER, 2001.**

Michael A. Sosnowski  
Attorneys for Named Defendant

**FILED**

OCT 19 2001

mllisnoce  
William A. Shaw  
Prothonotary

RACHEL TRAVENY,	:	IN THE COURT OF COMMON PLEAS
	:	CLEARFIELD COUNTY, PA
Plaintiff,	:	
	:	
vs.	:	01 – 1025 – CD
	:	
PRAXIDIO H. TAGALA, MD., ROBERTO	:	
LUNA, M.D. and CLEARFIELD HOSPITAL,	:	
	:	
Defendants.	:	<b>JURY TRIAL DEMANDED</b>

**ANSWER AND NEW MATTER TO COMPLAINT**

Defendant, CLEARFIELD HOSPITAL (“Hospital”), through its counsel, McINTYRE, DUGAS, HARTYE & SCHMITT, files the following Answer and New Matter to plaintiff’s Complaint.

1. After reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny the averments contained in Paragraph 1. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

2. The averments of Paragraph 2 are directed to another party. Accordingly, no response is required from the Hospital.

3. The averments of Paragraph 3 are directed to another party. Accordingly, no response is required from the Hospital.

4. The averments of Paragraph 4 are denied as stated. By way of further response, Clearfield Hospital is a corporation with a principle place of business at the location noted. As a hospital facility, Clearfield Hospital is not licensed to practice medicine as a physician is, and as such does not possess any “skills” in that regard as set forth in this paragraph. Furthermore, the Hospital is without sufficient knowledge or information to admit or deny allegations pertaining to the “overseeing” of Hospital facilities. Accordingly, these averments are deemed denied. Strict proof of all averments in this Paragraph except for those explicitly admitted is demanded at the time of trial.

5. – 12. With respect to the averments in Paragraphs 5 through 12, the Hospital is without knowledge or information concerning plaintiff’s condition, assessment, treatment or outcome beyond that contained in the Clearfield Hospital medical records for plaintiff. To the extent the averments in

these paragraphs are consistent with said averments, they are admitted. To the extent they are inconsistent, they are denied. To the extent any averments in these paragraphs are not addressed in the Clearfield Hospital medical records for plaintiff, the Hospital is without any knowledge or information to admit or deny them. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

#### **COUNT 1 – NEGLIGENCE**

##### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

13. The Hospital incorporates its responses contained in Paragraphs 1 through 12 of this Answer as if the same were set forth at length herein.

14. – 20. The averments contained in Paragraphs 14 through 20, including all subparagraphs contained therein, are directed to another party. Accordingly, no response is required from Clearfield Hospital.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

#### **COUNT II – INFORMED CONSENT/BATTERY**

##### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

21. The Hospital incorporates its responses contained in Paragraphs 1 through 20 of this Answer as if the same were set forth at length herein.

22. – 32. The averments contained in Paragraphs 22 through 32 are directed to another party. Accordingly, no response is required from Clearfield Hospital.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.



### **COUNT III – NEGLIGENCE**

#### **Rachel Traveny v. Roberto Luna, M.D.**

33. The Hospital incorporates its responses contained in Paragraphs 1 through 32 of this Answer as if the same were set forth at length herein.

34. – 40. The averments contained in Paragraphs 34 through 40, including all subparagraphs contained therein, are directed to another party. Accordingly, no response is required from Clearfield Hospital.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

### **COUNT IV – INFORMED CONSENT/BATTERY**

#### **Rachel Traveny v. Robert Luna, M.D.**

41. The Hospital incorporates its responses contained in Paragraphs 1 through 40 of this Answer as if the same were set forth at length herein.

42. – 52. The averments contained in Paragraphs 42 through 52, including all subparagraphs contained therein, are directed to another party. Accordingly, no response is required from Clearfield Hospital.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

### **COUNT V – NEGLIGENCE**

#### **Rachel Traveny v. Clearfield Hospital**

53. The Hospital incorporates its responses contained in Paragraphs 1 through 52 of this Answer as if the same were set forth at length herein.

54. The averments of Paragraph 54, including all subparagraphs contained therein, are generally denied pursuant to Pa. R.C.P. 1029 (e). By way of further response, after reasonable investigation, the Hospital is without sufficient knowledge or information to admit any averments contained in this paragraph relative to agency, or to the actions of any agents, servants and/or

employees insofar as the same are not identified nor are particular acts attributed to particular individuals. Accordingly, any such averments are deemed denied and strict proof thereof is demanded at the time of trial. Furthermore, to the extent any of these averments are deemed to refer to any ownership, possession or control of any property or instrumentality, Clearfield Hospital is similarly without sufficient information to admit or deny these averments insofar as they are not specifically identified. Accordingly, these are deemed denied and strict proof thereof is demanded at the time of trial.

55. The averments of Paragraph 55, including all subparagraphs contained therein, are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff, after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

56. The averments of Paragraph 56, including all subparagraphs contained therein, are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

57. The averments of Paragraph 57 are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

58. The averments of Paragraph 58 are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

59. The averments of Paragraph 59 are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

60. The averments of Paragraph 60 are generally denied pursuant to Pa R.C.P. 1029 (e) to the extent they allege that Clearfield Hospital was careless, negligent or caused injury to plaintiff in any fashion. With respect to injuries and damages allegedly suffered by the plaintiff after reasonable investigation, the Hospital is without sufficient knowledge or information to admit or deny these averments. Accordingly, they are deemed denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

#### **COUNT VI – PUNITIVE DAMAGES**

##### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

61. The Hospital incorporates its responses contained in Paragraphs 1 through 60 of this Answer as if the same were set forth at length herein.

62. – 63. The averments contained in Paragraphs 62 and 63, including all subparagraphs contained herein, are directed to another party. Accordingly, no response is required from Clearfield

Hospital. By way of further response, however, the claims contained in these paragraphs and this Count were stricken by the Court following Preliminary Objections.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

#### **COUNT VII – PUNITIVE DAMAGES**

##### **Rachel Traveny v. Robert Luna, M.D.**

64. The Hospital incorporates its responses contained in Paragraphs 1 through 63 of this Answer as if the same were set forth at length herein.

65. – 66. The averments contained in Paragraphs 65 and 66, including all subparagraphs contained therein, are directed to another party. Accordingly, no response is required from Clearfield Hospital. By way of further response, however, the claims contained in these paragraphs have been stricken by Order of Court following Preliminary Objections.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

#### **NEW MATTER**

1. Plaintiff's claims center around care and treatment received during or before December, 1985.

2. This action was initiated via a Praeceptum for Writ of Summons on or about June 27, 2001.

3. Under the applicable two (2) year statute of limitations, plaintiff's claims in this case would be time-barred absent a "discovery rule" type of situation.

4. Plaintiff has not pled any facts in her Complaint which set forth any "discovery rule" circumstances. Accordingly, plaintiff's claim is time-barred by the applicable statute of limitations.

5. Clearfield Hospital is a hospital facility licensed as such in the Commonwealth of Pennsylvania. It is not licensed to perform medical diagnosis and treatment as a physician is in this Commonwealth.

6. Under the facts and circumstances set forth in plaintiff's Complaint, plaintiff has failed to state a claim against Clearfield Hospital for which relief might be granted.

WHEREFORE, Defendant, Clearfield Hospital, denies that it is liable to any party and demands that judgment be entered in its favor and that this action be dismissed with prejudice.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

Michael A. Sosnowski

Attorney for Defendant,  
Clearfield Hospital

**Michael A. Sosnowski, Esquire**

**PA ID #: 67207**

P.O. Box 533

Hollidaysburg, PA 16648

814/696-3581

814/696-9399 Fax

To: Rachel Traveny

You are hereby notified to file a written response to the enclosed **New Matter** within **twenty (20) days** from service hereof or a judgment may be entered against you.

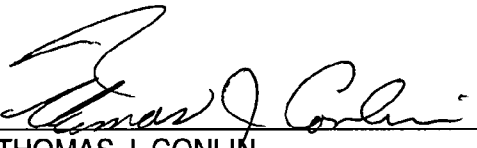
Michael A. Sosnowski

Attorney for Defendant  
Clearfield Hospital

**VERIFICATION**

I, Thomas J. Conlin, have been designated as the individual authorized to verify this Answer to plaintiff's Complaint on behalf of Defendant, Clearfield Hospital. In this capacity, I am represented by counsel. I have furnished to my counsel factual information upon which the foregoing Answer is based. To the extent that it is based on the factual information provided to counsel, I verify that those facts are true and correct to the best of my knowledge, information and belief. However, the language is that of counsel and, to the extent that it goes beyond the factual information which I have provided to counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsifications to authorities.

  
THOMAS J. CONLIN

Date: 10/11/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**PRAECIPE FOR APPEARANCE**

Filed on Behalf of Defendant,  
Praxidio H. Tagala, M.D.

Counsel of Record for This  
Party:

JOSEPH A. MACERELLI, ESQUIRE  
Pa. I.D. #34307

GROGAN GRAFFAM MCGINLEY, P.C.  
Firm #072  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
(412) 553-6300

File No.: 56225/00219

**FILED**

NOV 01 2001

m/11/18/10cc  
William A. Shaw  
Prothonotary *ES*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

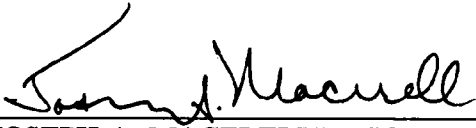
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) No. 01-1025-CD  
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**PRAECIPE FOR APPEARANCE**

To: Prothonotary

Kindly enter our appearance on behalf of Defendant, Praxidio H. Tagala, M.D. only in  
the above-captioned action.

GROGAN GRAFFAM MCGINLEY, P.C.

By:   
JOSEPH A. MACERELLI, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
PRAXIDIO H. TAGALA, M.D.



**CERTIFICATE OF SERVICE**

I, Joseph A. Macerelli, Esquire hereby certify that a true and correct copy of the foregoing Praecipe for Appearance was mailed first class, postage prepaid to the following counsel of record on the 30<sup>th</sup> day of October, 2001:

Howard F. Messer, Esquire  
Philip A. Fabiano, Esquire  
Howard F. Messer, P.C.  
310 Grant Street  
Suite 530 Grant Building  
Pittsburgh, PA 15219

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, Pennsylvania 16801

Michael Sosnowski, Esquire  
McIntyre Dugas Hartye & Schmidt  
P.O. Box 533  
Hollidaysburg, PA 16648

GROGAN GRAFFAM MCGINLEY, P.C.

By:   
JOSEPH A. MACERELLI, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

CIVIL DIVISION

No. 01-1025-CD

Issue No.

**PRAECIPE FOR APPEARANCE**

Code:

Filed on behalf of Roberto Luna, M.D., one of  
the defendants

Counsel of Record for this Party:

James R. Hartline, Esquire  
PA I.D. #21299

Thomson, Rhodes & Cowie, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED**  
NOV 05 2001  
William A. Shaw  
Prothonotary

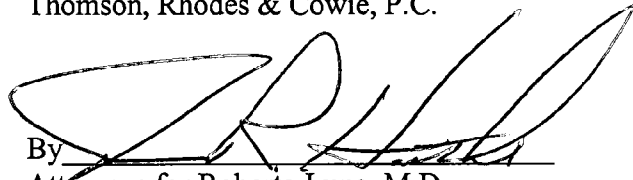
**PRAECIPE FOR APPEARANCE**

TO: WILLIAM SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of Roberto Luna, M.D., one of the defendants.

JURY TRIAL DEMANDED.

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie, P.C.

By   
Attorneys for Roberto Luna, M.D.,  
One of the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
)  
)  
) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading:  
) ANSWER WITH NEW MATTER  
) TO PLAINTIFF'S COMPLAINT  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
) Court I.D. No.: 06787  
)  
) RICHARD K. LAWS  
) Court I.D. No. 82369  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 11/21/01

**FILED**

NOV 05 2001

m. j. 2281 noc

John A. Shaw  
Prothonotary

*[Signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED

NO. 01-1025 CD

NOTICE TO PLEAD

TO: Rachel Traveny, Plaintiff  
c/o Philip A. Fabiano, Esquire  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219

YOU ARE HEREBY notified to plead to the within Answer with New Matter within  
twenty (20) days from the date of service hereof or a default judgment may be entered against  
you.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:



JOHN W. BLASKO  
RICHARD K. LAWS  
Attorney for Defendant  
Roberto Luna, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926

Dated:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

**ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT**  
**FILED ON BEHALF OF DEFENDANT ROBERTO LUNA, M.D.**

AND NOW comes the Defendant, Roberto Luna, M.D., by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the within Answer with New Matter to Plaintiff's Complaint, as follows:

1. Defendant, Dr. Luna, is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 1, and, therefore, they are denied.
2. The averments of Paragraph 2 pertain to a Defendant other than that answering herein and, thus, no response is necessary.
3. The averments of Paragraph 3 are admitted, to the extent they allege Dr. Luna was an individual and physician duly licensed to practice medicine in the Commonwealth of Pennsylvania at the time period relevant to Plaintiff's Complaint. However, Dr. Luna's principal place of business at this time was 531 Hannah Street, Clearfield, Clearfield County, PA 16830.
4. The averments of Paragraph 4 pertain to a Defendant other than that answering herein and, thus, no response is necessary.

5. Denied. Defendant, Dr. Luna's, only contact with Plaintiff was as an assistant to Defendant Dr. Tagala, who performed Plaintiff's December 11, 1985 surgical procedure. To the extent that the averments of Paragraph 5 differ from that set forth herein, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

6. The averments of Paragraph 6 pertain to a Defendant other than that answering herein and, thus, no response is necessary. To the extent that a response is deemed necessary, it is admitted that Defendant, Dr. Luna, did not participate in Plaintiff's June 26, 1985 surgical procedure and/or any care and treatment leading up to and including said procedure. To the extent that the averments of Paragraph 6 differ from that set forth herein, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

7. The averments of Paragraph 7 pertain to a Defendant other than that answering herein and, thus, no response is necessary. To the extent that a response is deemed necessary, it is denied that Defendant, Dr. Luna, was involved with the decision to place Plaintiff on a course of hormonal therapy and/or involved in explanations as to the unsuccessful nature of same, as alleged within Paragraph 7. To the contrary, Defendant, Dr. Luna's, only contact with Plaintiff was as an assistant to Defendant Dr. Tagala, who performed Plaintiff's December 11, 1985 surgical procedure. To the extent that the averments of Paragraph 7 differ from that set forth herein, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

8. The averments of Paragraph 8 pertain to a Defendant other than that answering herein and, thus, no response is necessary. To the extent that a response is deemed necessary, it is denied that Defendant, Dr. Luna, informed Plaintiff that her only option to treat her condition was a complete hysterectomy since there was no other available alternative treatment or therapy and/or that such procedure was necessary for the reasons alleged within Paragraph 8. To the

contrary, Defendant, Dr. Luna's, only contact with Plaintiff was as an assistant to Defendant Dr. Tagala, who performed Plaintiff's December 11, 1985 surgical procedure. Dr. Luna was not involved in pre-operative care and/or treatment of Plaintiff and did not have discussions with Plaintiff throughout this time period. To the extent that the averments of Paragraph 8 differ from that set forth herein, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

9. The averments of Paragraph 9 are denied as stated and/or denied per Pa.R.C.P. 1029(e). In response to said Paragraph, Defendant, Dr. Luna, hereby incorporates, by reference, the medical records relative to the surgical procedure performed on Plaintiff by Dr. Tagala. Said medical records demonstrate that the foregoing procedure was performed on December 11, 1985 by Tagala, with Dr. Luna serving as Dr. Tagala's assistant. To the extent that the averments of Paragraph 9 differ from that set forth herein, and/or reflected in Plaintiff's medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

10-11. The averments of Paragraphs 10 and 11 pertain to a Defendant other than that answering herein and, thus, no response is necessary. To the extent that a response is deemed necessary, Defendant, Dr. Luna, is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraphs 10 and 11, and, therefore, they are denied.

12. The averments of Paragraph 12 contain statements as to Plaintiff's legal position and/or conclusions of law, and, thus, no affirmative response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 12 are denied per Pa.R.C.P. 1029(e). Insofar as any damages and/or losses were and/or will be sustained as alleged within Plaintiff's Complaint, it is not as the result of any tortious conduct on the part of Defendant Dr. Luna.



**COUNT I - NEGLIGENCE**  
**RACHEL TRAVENY V. PRAXIDIO H. TAGALA, M.D.**

13. Dr. Luna incorporates Paragraphs 1 through 12 of this Answer and New Matter as if more fully set forth herein at length.

14. The averments of Paragraph 14 (including subparagraphs (a) through (mm)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 14 (including subparagraphs (a) through (mm)) are denied and/or denied per Pa.R.C.P. 1029(e).

15. The averments of Paragraph 15 (including subparagraphs (a) through (n)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 15 (including subparagraphs (a) through (n)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 15, it is not as the result of any tortious conduct on the part of Dr. Luna.

16. The averments of Paragraph 16 (including subparagraphs (a) through (d)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 16 (including subparagraphs (a) through (d)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 16, it is not as the result of any tortious conduct on the part of Dr. Luna.

17-20. The averments of Paragraphs 17 through 20 pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 17 through 20 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 17 through 20, it is not as the result of any tortious conduct on the part of Dr. Luna.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT II - INFORMED CONSENT / BATTERY**  
**RACHEL TRAVENY V. PRAXIDIO H. TAGALA, M.D.**

21. Dr. Luna incorporates Paragraphs 1 through 20 of this Answer and New Matter as if more fully set forth herein at length.

22-26. The averments of Paragraphs 22 through 26 pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 22 through 26 are denied per Pa.R.C.P. 1029(e) and/or because Dr. Luna is without sufficient knowledge or information to form a belief as to the truth of the averments contained therein.

27. The averments of Paragraph 27 (including subparagraphs (a) through (n)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 27 (including subparagraphs (a)

through (n)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 27, it is not as the result of any tortious conduct on the part of Dr. Luna.

28. The averments of Paragraph 28 (including subparagraphs (a) through (d)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 28 (including subparagraphs (a) through (d)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 28, it is not as the result of any tortious conduct on the part of Dr. Luna.

29-32. The averments of Paragraphs 29 through 32 pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 29 through 32 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 29 through 32, it is not as the result of any tortious conduct on the part of Dr. Luna.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT III - NEGLIGENCE**  
**RACHEL TRAVENY V. ROBERTO LUNA, M.D.**

33. Dr. Luna incorporates Paragraphs 1 through 32 of this Answer and New Matter as if more fully set forth herein at length.

34. The averments of Paragraph 34 (including subparagraphs (a) through (mm)) contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 34 (including subparagraphs (a) through (mm)) are denied and/or denied per Pa.R.C.P. 1029(e).

35. The averments of Paragraph 35 (including subparagraphs (a) through (n)) contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 35 (including subparagraphs (a) through (n)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 35, it is not as the result of any tortious conduct on the part of Dr. Luna.

36. The averments of Paragraph 36 (including subparagraphs (a) through (d)) contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 36 (including subparagraphs (a) through (d)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 36, it is not as the result of any tortious conduct on the part of Dr. Luna.

37-40. The averments of Paragraphs 37 through 40 contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 37 through 40 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 37 through 40, it is not as the result of any tortious conduct on the part of Dr. Luna.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT IV - INFORMED CONSENT / BATTERY**  
**RACHEL TRAVENY V. ROBERTO LUNA, M.D.**

41. Dr. Luna incorporates Paragraphs 1 through 40 of this Answer and New Matter as if more fully set forth herein at length.

42-46. The averments of Paragraphs 42 through 46 contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 42 through 46 are denied per Pa.R.C.P. 1029(e). It is specifically denied that Dr. Luna had a legal duty to obtain Plaintiff's informed consent as alleged within the Complaint. To the contrary, said legal duty would have rested with the physician performing said procedure.

47. The averments of Paragraph 47 (including subparagraphs (a) through (n)) contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 47 (including subparagraphs (a) through (n)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 47, it is not as the result of any acts and/or omissions on the part of Dr. Luna.

48. The averments of Paragraph 48 (including subparagraphs (a) through (d)) contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 48 (including subparagraphs (a) through (d)) are denied per Pa.R.C.P. 1029(e). To the extent that

any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 48, it is not as the result of any acts and/or omissions on the part of Dr. Luna.

49-52. The averments of Paragraphs 49 through 52 contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 49 through 52 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 49 through 52, it is not as the result of any acts and/or omissions on the part of Dr. Luna.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT V - NEGLIGENCE**  
**RACHEL TRAVENY V. CLEARFIELD HOSPITAL**

53. Dr. Luna incorporates Paragraphs 1 through 52 of this Answer and New Matter as if more fully set forth herein at length.

54. The averments of Paragraph 54 (including subparagraphs (a) through (w)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 54 (including subparagraphs (a) through (w)) are denied and/or denied per Pa.R.C.P. 1029(e).

55. The averments of Paragraph 55 (including subparagraphs (a) through (n)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a

response is deemed necessary, the averments of Paragraph 55 (including subparagraphs (a) through (n)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 55, it is not as the result of any tortious conduct on the part of Dr. Luna.

56. The averments of Paragraph 56 (including subparagraphs (a) through (d)) pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 56 (including subparagraphs (a) through (d)) are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraph 56, it is not as the result of any tortious conduct on the part of Dr. Luna.

57-60. The averments of Paragraphs 57 through 60 pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 57 through 60 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 57 through 60, it is not as the result of any tortious conduct on the part of Dr. Luna.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT VI - PUNITIVE DAMAGES**  
**RACHEL TRAVENY V. PRAXIDIO H. TAGALA, M.D.**

61. Dr. Luna incorporates Paragraphs 1 through 60 of this Answer and New Matter as if more fully set forth herein at length.

62-63. The averments of Paragraphs 62 through 63 pertain to a Defendant other than that answering herein and/or contain statements as to Plaintiff's legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 62 through 63 are denied per Pa.R.C.P. 1029(e) and/or because Dr. Luna is without sufficient knowledge or information to form a belief as to the truth of the averments contained therein.

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.

**COUNT VII - PUNITIVE DAMAGES**  
**RACHEL TRAVENY V. ROBERTO LUNA, M.D.**

64. Dr. Luna incorporates Paragraphs 1 through 63 of this Answer and New Matter as if more fully set forth herein at length.

65-66. The averments of Paragraphs 65 through 66 have been stricken from Plaintiff's Complaint, without prejudice, and, therefore no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraph 65 through 66 are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Dr. Luna respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiff, award his cost of this suit, plus such other relief as is deemed just and equitable.



**NEW MATTER**

67. Answering Defendant, Dr. Luna, hereby incorporates Paragraphs 1 through 66 of this Answer and New Matter as if the same were set forth at length herein.

68. Answering Defendant, Dr. Luna, raises all affirmative defenses of the Health Care Services Malpractice Act, 40 PS §1301.101 *et. seq.* As stated by Section 606 of the Health Care Services Malpractice Act, "[i]n the absence of a special contract in writing, a health care provider is neither a warrantor nor a guarantor of a cure."

69. Dr. Luna's only involvement in the care that forms the basis of Plaintiff's Complaint was as an assistant to Dr. Tagala during the performance of Plaintiff's December 11, 1985 surgical procedure.

70. The surgical procedure that forms the basis of Plaintiff's Complaint took place on December 11, 1985.

71. Plaintiff did not initiate this lawsuit until June 27, 2001 by way of Writ of Summons.

72. The Statute of Limitations applicable to this case is two years.

73. The Plaintiff has not pled any facts involving the discovery rule within her Complaint.

74. Thus, all of Plaintiff's claims are time-barred due to the expiration of the applicable statute of limitations.

75. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiff's claims are barred pursuant to the affirmative defense of Release.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

BY



JOHN W. BLASKO

RICHARD K. LAWS

Attorneys for Defendant, Dr. Luna

811 University Drive

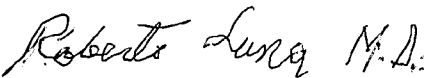
State College, PA 16801

(814) 238-4926

Traveny v. Luna

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action; and that the statements made in the foregoing ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT, are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.

  
\_\_\_\_\_  
ROBERTO LUNA, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants.

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JURY TRIAL DEMANDED

NO. 01-1025 CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Answer with New Matter to Plaintiff's Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 2nd day of November, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219, Joseph A. Macerelli, Three Gateway Center, 22<sup>nd</sup> Floor, Pittsburgh, PA 15222-1009 and Michael Sosnowski, P.O. Box 533, Hollidaysburg, PA 16648.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO  
RICHARD K. LAWS  
Attorneys for Defendant  
Roberto Luna, M.D.

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**PLAINTIFF'S REPLY TO NEW  
MATTER OF DEFENDANT ROBERTO  
LUNA, M.D.**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

NOV 07 2001

William A. Shaw  
Prothonotary

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S REPLY TO NEW MATTER  
OF DEFENDANT ROBERTO LUNA, M.D.**

AND NOW, comes the plaintiff, by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and hereby files the following Reply to New Matter of Defendant Roberto Luna, M.D., as follows:

67. - 75. The averments contained in paragraphs 67 through 75 of the defendant's New Matter contain conclusions of law to which no response is necessary and are otherwise denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). To the extent any averments contained in defendant's New Matter are outside the scope of Rule 1029(e), the injuries and damages suffered by the plaintiff are the sole, direct and proximate result of the acts and/or omissions of the answering defendant and/or the other defendant to this claim as set forth in the plaintiff's Complaint.

WHEREFORE, plaintiff respectfully requests this Honorable Court to dismiss the defendant's New Matter and to award judgment in favor of the plaintiff and against the defendants.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", is written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Reply to New Matter of Defendant Roberto Luna, M.D.**, has been served this 5<sup>th</sup> day of November 2001, by U.S. first-class mail, postage prepaid, to:

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie  
1010 Two Chatham Center  
Pittsburgh, PA 15222  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Patrick Stapleton, III, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
1811 Chestnut Street  
Philadelphia, PA 19103  
**Attorneys for Defendant**  
**Clearfield Hospital**



Philip A. Fabiano



**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

Plaintiffs,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**PLAINTIFF'S REPLY TO NEW  
MATTER OF DEFENDANT  
CLEARFIELD HOSPITAL**

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

**NOV 07 2001**

**William A. Shaw  
Prothonotary**

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**PLAINTIFF'S REPLY TO NEW MATTER  
OF DEFENDANT CLEARFIELD HOSPITAL**

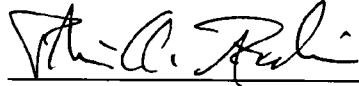
AND NOW, comes the plaintiff, by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and hereby files the following Reply to New Matter of Defendant Clearfield Hospital. as follows:

1. - 6. The averments contained in paragraphs 1 through 6 of the defendant's New Matter contain conclusions of law to which no response is necessary and are otherwise denied pursuant to Pennsylvania Rules of Civil Procedure 1029(e). To the extent any averments contained in defendant's New Matter are outside the scope of Rule 1029(e), the injuries and damages suffered by the plaintiff are the sole, direct and proximate result of the acts and/or omissions of the answering defendant and/or the other defendant to this claim as set forth in the plaintiff's Complaint.

WHEREFORE, plaintiff respectfully requests this Honorable Court to dismiss the defendant's New Matter and to award judgment in favor of the plaintiff and against the defendants.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES

A handwritten signature in black ink, appearing to read "Philip A. Fabiano", is written over a horizontal line.

Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **Plaintiff's Reply to New Matter of Defendant Clearfield Hospital** has been served this 5<sup>th</sup> day of November 2001, by U.S. first-class mail, postage prepaid, to:

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
**Attorneys for Defendant**  
**Praxidio H. Tagala, M.D.**

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie  
1010 Two Chatham Center  
Pittsburgh, PA 15222  
**Attorneys for Defendant**  
**Roberto Luna, M.D.**

Patrick Stapleton, III, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
1811 Chestnut Street  
Philadelphia, PA 19103  
**Attorneys for Defendant**  
**Clearfield Hospital**

  
\_\_\_\_\_  
Philip A. Fabiano

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RACHEL TRAVENY,

CIVIL DIVISION

Plaintiff,

NO. 01-1025-CD

v.

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; and  
CLEARFIELD HOSPITAL

Filed on Behalf of Defendant, Clearfield  
Hospital

Defendants.

Counsel of record for this party:

Patrick J. Stapleton, III, Esquire  
Pa. I.D. No.: 38057

Samuel H. Foreman, Esquire  
Pa. I.D. No.: 77096

WEBER GOLDSTEIN GREENBERG  
& GALLAGHER, LLP  
Firm No. 594

Two Gateway Center - Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222

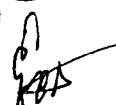
(412) 281-4541  
(412) 281-4547 FAX

**JURY TRIAL DEMANDED**

**FILED**

NOV 13 2001

William A. Shaw  
Prothonotary



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **PRAECIPE FOR ENTRY OF APPEARANCE** has been served on the following counsel of record by U.S. first class mail, postage prepaid on this 8<sup>th</sup> day of November, 2001:

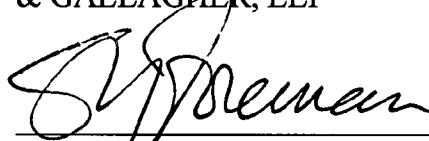
Howard F. Messer, Esquire  
Philip A. Fabiano, Esquire  
Howard F. Messer, P.C.  
310 Grant Street  
Grant Building, Suite 530  
Pittsburgh, PA 15219  
**Attorneys for Plaintiff**  
**Rachel Traveny**

John Blasko, Esquire  
McQuaide Blasko  
811 University Drive  
State College, PA 16801  
**Attorney for Defendant**  
**Roberto Luna, M.D.**

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
**Attorney for Defendant**  
**Praxidio H. Tagala, M.D.**

WEBER GOLDSTEIN GREENBERG  
& GALLAGHER, LLP

BY:



PATRICK J. STAPLETON, III, ESQUIRE  
SAMUEL H. FOREMAN, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

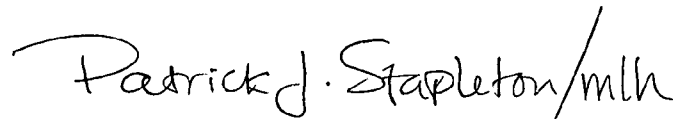
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: WILLIAM SHAW, PROTHONOTARY

Kindly enter our appearances as counsel of record for Defendant, CLEARFIELD  
HOSPITAL.

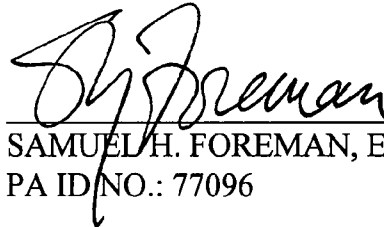
WEBER GOLDSTEIN GREENBERG &  
GALLAGHER, LLP

BY:



PATRICK J. STAPLETON, III, ESQUIRE  
PA ID NO.: 38057

BY:



SAMUEL H. FOREMAN, ESQUIRE  
PA ID NO.: 77096

ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

Two Gateway Center  
Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222

(412) 281-4541

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D., ROBERTO  
LUNA, M.D., and CLEARFIELD  
HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

Code No.

**PRAECIPE TO WITHDRAW/ENTER  
APPEARANCE**

Filed on Behalf of Defendant, Praxidio H.  
Tagala, M.D.

Counsel of Record for this Party:

Walter Fredrick Wall, ESQUIRE  
PA. I.D. #23657

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.

Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

NOV 14 2001

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,  
Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.,  
and CLEARFIELD HOSPITAL,  
Defendants.

: No. 01-1025-CD  
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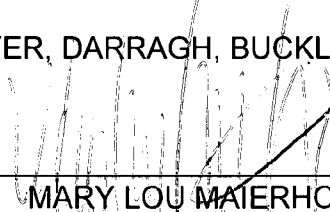
**PRAECIPE TO WITHDRAW/ENTER APPEARANCE**

TO THE PROTHONOTARY:

Please withdraw the appearance of the undersigned as counsel for Defendant,  
Praxidio H. Tagala, M.D., in the above-captioned matter.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

  
\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona PA 16602  
(814) 941-4600  
ID# 62175


DATE: 1-13-01

TO THE PROTHONOTARY:

Please enter my appearance as counsel for Defendant, Praxidio H. Tagala, M.D.,  
in the above-captioned matter.

GROGAN, GRAFFAM, MCGINLEY, P.C.

BY:

  
\_\_\_\_\_  
JOSEPH MACERELLI, ESQUIRE  
22<sup>nd</sup> Floor, 3 Gateway Center  
Pittsburgh, PA 15222-1009  
(412) 553-6300  
ID# 34307

DATE: \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,	:	No. 01-1025-CD
Plaintiff,	:	
vs.	:	
	:	
PRAXIDIO H. TAGALA, M.D.;	:	
ROBERTO LUNA, M.D.,	:	
and CLEARFIELD HOSPITAL,	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the Law Firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, on behalf of Defendant, Praxidio H. Tagala, M.D., hereby certify that on the **13<sup>th</sup> day of November, 2001**, a true and correct copy of the Praecept to Withdraw/Enter Appearance was served upon Parties of record and/or Counsel by U.S. Mail, postage prepaid, addressed as follows:

Howard F. Messer, Esquire  
Suite 1404  
Grant Building  
Pittsburgh, PA 15219

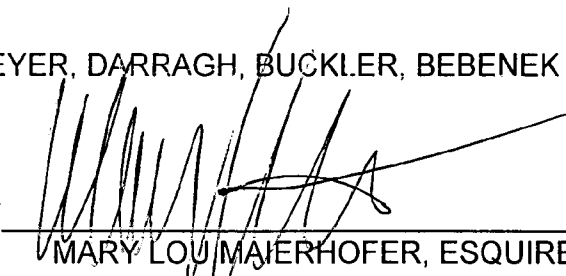
John W. Blasko, Esquire  
MCQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.  
811 University Drive  
State College, PA 16801

Michael A. Sosnowski, Esquire  
PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

Joseph Macerelli, Esquire  
GROGAN, GRAFFAM, MCGINLEY, P.C.  
22<sup>nd</sup> Floor, 3 Gateway Center  
Pittsburgh, PA 15222-1009

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY

  
\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Praxidio H. Tagala, M.D.  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(814) 941-4600  
P.A. ID 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

) No.: 01-1025 CD  
)  
)  
) Type of Case: Civil Action  
)  
) JURY TRIAL DEMANDED  
)  
) Type of Pleading:  
) PRAECIPE FOR WITHDRAWAL  
) OF APPEARANCE  
)  
)  
) Filed on Behalf of Defendant  
) ROBERTO LUNA, M.D.  
)  
)  
)  
) Counsel of Record for this  
) Party: JOHN W. BLASKO  
) Court I.D. No.: 06787  
)  
)  
) RICHARD K. LAWS  
) Court I.D. No. 82369  
)  
)  
) McQUAIDE, BLASKO, SCHWARTZ,  
) FLEMING & FAULKNER, INC.  
)  
)  
) 811 University Drive  
) State College, PA 16801  
) (814) 238-4926  
)  
)  
)  
) Counsel of Record for  
) Adverse Party:  
) PHILIP A. FABIANO

Dated: 11/14/01

**FILED**

NOV 15 2001

11/15/01  
William A. Shaw  
Prothonotary

no cc

ED  
KOA

11/14/01

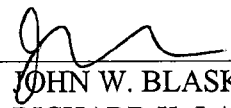
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
PRAXIDIO H. TAGALA, M.D.,	)	NO. 01-1025 CD
ROBERTO LUNA, M.D. and	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praecipe for Withdrawal of Appearance on behalf of Defendant, Robert Luna, M.D., in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 14<sup>th</sup> day of November, 2001, to Philip A. Fabiano, 310 Grant Street, Suite 530, Grant Building, Pittsburgh, PA 15219, Joseph A. Macerelli, Three Gateway Center, 22<sup>nd</sup> Floor, Pittsburgh, PA 15222, Patrick J. Stapleton, III, Two Gateway Center, Suite 1450, 603 Stanwix Street, Pittsburgh, PA 15222 and James R Hartline, 1010 Two Chatham Center, Pittsburgh, PA 15219.

McQUAIDE, BLASKO, SCHWARTZ,  
FLEMING & FAULKNER, INC.

By:   
JOHN W. BLASKO  
RICHARD K. LAWS  
Attorneys for Defendant  
Roberto Luna, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants.

01 – 1025 – CD

**ISSUE:**  
**PRAECIPE FOR WITHDRAWAL OF**  
**APPEARANCE**

Filed on behalf of Defendant:  
**CLEARFIELD HOSPITAL**

Counsel of Record for this Party:  
McINTYRE, DUGAS, HARTYE  
& SCHMITT  
**MICHAEL A. SOSNOWSKI, ESQUIRE**  
**PA ID# 67207**  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
(814) 696-9339 – FAX

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN HAS  
BEEN SERVED ON ALL COUNSEL OF  
RECORD THIS 16<sup>TH</sup> DAY OF **NOVEMBER, 2001.**

Michael A. Sosnowski  
Attorneys for Named Defendant

**FILED**

NOV 19 2001  
m/8:30/ins  
William A. Shaw  
Prothonotary

NO CENT COPIES

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, MD., ROBERTO  
LUNA, M.D. and CLEARFIELD HOSPITAL,

Defendants. :

IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

01 – 1025 – CD

**JURY TRIAL DEMANDED**

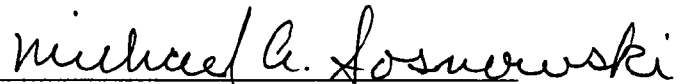
**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

TO: PROTHONOTARY

Kindly withdraw my firm's appearance as counsel of record for defendant, CLEARFIELD HOSPITAL. The law firm of Weber, Goldstein, Greenberg & Gallagher, LLP., has entered its appearance as substitute counsel on behalf of this party.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT



Attorney for Defendant  
CLEARFIELD HOSPITAL  
**Michael A. Sosnowski, Esquire**  
**PA I.D. #67207**  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 Fax

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

ANSWER AND NEW MATTER

Filed on Behalf of Defendant,  
Praxidio H. Tagala, M.D.

Counsel of Record for This  
Party:

JOSEPH A. MACERELLI, ESQUIRE  
Pa. I.D. #34307

GROGAN GRAFFAM MCGINLEY, P.C.  
Firm #072  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
(412) 553-6300

File No.: 56225/00219

**FILED**

NOV 26 2001

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.


)  
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) No. 01-1025-CD  
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**NOTICE TO PLEAD**

To: Counsel

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

GROGAN GRAFFAM MCGINLEY, P.C.

By:   
JOSEPH A. MACERELLI, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
PRAXIDIO H. TAGALA, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 01-1025-CD
PRAXIDIO H. TAGALA, M.D.;	)	
ROBERTO LUNA, M.D.; AND	)	
CLEARFIELD HOSPITAL,	)	
	)	
Defendants.	)	

**ANSWER AND NEW MATTER**

Defendant, Praxidio H. Tagala, M.D. ("Dr. Tagala"), by and through his attorneys, Grogan Graffam McGinley , P.C., files the following Answer and New Matter:

Dr. Tagala denies generally all allegations and averments set forth in Plaintiff's Complaint pursuant to Rule 1029 of the Pennsylvania Rules of Civil Procedure and, more specifically, as hereinafter set forth. By way of further response, except as otherwise set forth herein, Dr. Tagala after reasonable investigation is without sufficient knowledge or information to form a belief as to the truth of the majority of averments set forth in Plaintiff's Complaint, the same are therefore denied and proof is demanded.

1. After reasonable investigation, Dr. Tagala is without sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 1 of Plaintiff's Complaint, the same are therefore denied and proof demanded.

2. Admitted.

3-4. Paragraphs 3 and 4 of Plaintiff's Complaint are directed to parties other than Dr. Tagala and therefore no response is required.

5-11. After reasonable investigation, Dr. Tagala is without sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraphs 5 through 11 of Plaintiff's Complaint, the same are therefore denied and proof demanded.

12. The averments set forth in paragraph 12 of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded.

### **Count I – Negligence**

#### **Rachel Traveny v. Praxidio H. Tagala, M.D.**

13. Dr. Tagala incorporates herein by reference paragraphs 1 through 12 as if fully set forth at length herein.

14. The averments set forth in paragraph 14 and its subparagraphs (a) through (mm) of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraph 14 and its subparagraphs (a) through (mm) are denied pursuant to Pa.R.C.P. 1029(e). By way of further response, Dr. Tagala at all pertinent times rendered timely and appropriate medical care and treatment for Plaintiff which comported with all applicable standards.

15. The averments set forth in paragraph 15 and its subparagraphs (a) through (n) of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraph 15 and its subparagraphs (a) through (n) are denied pursuant to Pa.R.C.P. 1029(e).

16. The averments set forth in paragraph 16 and its subparagraphs (a) through (d) of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraph 16 and its subparagraphs (a) through (d) are denied pursuant to Pa.R.C.P. 1029(e).

17-20. The averments set forth in paragraphs 17 through 20 of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraphs 17 through 20 are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**Count II – Informed Consent/Battery**

**Rachel Traveny v. Praxidio H. Tagala, M.D.**

21. Dr. Tagala incorporates herein by reference paragraphs 1 through 20 as if fully set forth at length herein.

22-26. After reasonable investigation, Dr. Tagala is without sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraphs 22 through 26 of Plaintiff's Complaint, the same are therefore denied and proof demanded.

27. The averments set forth in paragraph 27 and its subparagraphs (a) through (n) of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraph 27 and its subparagraphs (a) through (n) are denied pursuant to Pa.R.C.P. 1029(e).

28. The averments set forth in paragraph 28 and its subparagraphs (a) through (d) of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore

denied and proof demanded. Any and all remaining factual allegations set forth in paragraph 28 and its subparagraphs (a) through (d) are denied pursuant to Pa.R.C.P. 1029(e).

29-32. The averments set forth in paragraphs 29 through 32 of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraphs 29 through 32 are denied pursuant to Pa.R.C.P. 1029(e).

29-32. The averments set forth in paragraphs 29 through 32 of Plaintiff's Complaint constitute legal conclusions and/or remain at issue, the same are therefore denied and proof demanded. Any and all remaining factual allegations set forth in paragraphs 29 through 32 are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

### **Count III – Negligence**

#### **Rachel Traveny v. Roberto Luna, M.D.**

33. Dr. Tagala incorporates herein by reference paragraphs 1 through 32 as if fully set forth at length herein.

34-40. Paragraphs 34 through 40 of Plaintiff's Complaint are directed to a party other than Dr. Tagala and therefore no response is required.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**Count IV – Informed Consent/Battery**

**Rachel Traveny v. Roberto Luna, M.D.**

41. Dr. Tagala incorporates hereby by reference paragraphs 1 through 40 as if fully set forth at length herein.

42-52. Paragraphs 42 through 52 of Plaintiff's Complaint are directed to a party other than Dr. Tagala and therefore no response is required.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**Count V – Negligence**

**Rachel Traveny v. Clearfield Hospital**

53. Dr. Tagala incorporates hereby by reference paragraphs 1 through 52 as if fully set forth at length herein.

54-60. Paragraphs 54 through 60 of Plaintiff's Complaint are directed to a party other than Dr. Tagala and therefore no response is required.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**Count VI – Punitive Damages**

**Rachel Traveny v. Praxidio H. Tagala, M.D.**

61-63 This portion of Plaintiff's Complaint against Dr. Tagala has been stricken by Order of the Honorable John K. Reilly, Jr. dated September 28, 2001.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**Count VII – Punitive Damages**

**Rachel Traveny v. Roberto Luna, M.D.**

64. Dr. Tagala incorporates hereby by reference paragraphs 1 through 63 as if fully set forth at length herein.

65-66. Paragraphs 65 and 66 of Plaintiff's Complaint are directed to a party other than Dr. Tagala and therefore no response is required.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D., requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

**NEW MATTER**

61. Plaintiff has failed to set forth a cause of action against Defendant Dr. Tagala upon which relief can be granted.

62. Plaintiff's action was not filed before the expiration of the applicable statute of limitations, and should therefore be barred.

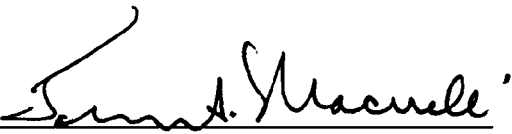
63. Plaintiff was contributorily negligent and assumed the risk of any or all injuries and losses claimed, and should therefore be barred from recovery. In the alternative, the contributory negligence and assumption of the risk is plead in diminution of any damages Plaintiff may prove pursuant to the Pennsylvania Comparative Negligence Act.

64. Plaintiff was timely and appropriately informed by Dr. Tagala of the nature and extent of any surgical procedures in question, including any risks, complications and alternative procedures, and voluntarily and with full knowledge and appreciation of same agreed to undergo any such surgical procedures.

65. In the unlikely event of a finding of negligence, the negligence of others including, but not limited to, Plaintiff, was an intervening and superseding cause of any alleged injuries and losses for which claim is made.

WHEREFORE, Defendant, Praxidio H. Tagala, M.D. requests that judgment be entered in his favor with proper costs and charges to Plaintiff.

GROGAN GRAFFAM MCGINLEY, P.C.

By:   
JOSEPH A. MACERELLI, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
PRAXIDIO H. TAGALA, M.D.



**VERIFICATION**

Praxidio H. Tagala, M.D., who first being duly sworn according to law, deposes and says that he is the Defendant in the foregoing and that he has read the information contained in the Answer and New Matter and that the same are true and correct according to his knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A. §4906 relating to unsworn fabrication to authorities, which provides that if I made knowingly false averments I may be subject to criminal penalties.

  
PRAXIDIO H. TAGALA, M.D.

Date: 11/15/01

**CERTIFICATE OF SERVICE**

I, Joseph A. Macerelli, Esquire hereby certify that a true and correct copy of the foregoing Answer and New Matter was mailed first class, postage prepaid to the following counsel of record on the 20<sup>th</sup> day of November, 2001:

Philip A. Fabiano, Esquire  
Howard F. Messer, P.C.  
310 Grant Street  
Suite 530 Grant Building  
Pittsburgh, PA 15219

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie  
1010 Two Chatham Center  
Pittsburgh, PA 15222

Patrick Stapleton, III, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
1811 Chestnut Street  
Philadelphia, PA 19103

GROGAN GRAFFAM MCGINLEY, P.C.

By:   
JOSEPH A. MACERELLI, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION

No. 01-1025-CD

**NOTICE OF SERVICE OF ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND RESPONSE  
TO FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Filed on Behalf of Defendant,  
Praxidio H. Tagala, M.D.

Counsel of Record for This  
Party:

JOSEPH A. MACERELLI, ESQUIRE  
Pa. I.D. #34307

GROGAN GRAFFAM MCGINLEY, P.C.  
Firm #072  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
(412) 553-6300

File No.: 56225/00219

**FILED**

DEC 17 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

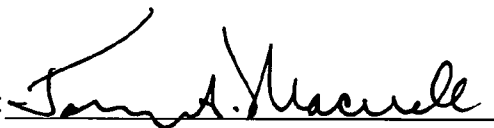
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) No. 01-1025-CD  
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**NOTICE OF SERVICE OF ANSWERS TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES  
AND RESPONSE TO FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

I certify that pursuant to the Pennsylvania Rules of Civil Procedure, as amended, Answers to Interrogatories and Response to Request for Production of Documents Directed to Defendant Praxidio H. Tagala, M.D. were served on Philip A. Fabiano, Esquire, Howard F. Messer, P.C., 310 Grant Street, Suite 530 Grant Building, Pittsburgh, PA 15219 attorney for Plaintiff on the 13<sup>th</sup> day of December, 2001.

GROGAN GRAFFAM MCGINLEY, P.C.

By:

  
JOSEPH A. MACERELLI, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
PRAXIDIO H. TAGALA, M.D.

**CERTIFICATE OF SERVICE**

I, Joseph A. Macerelli, Esquire, hereby certify that a true and correct copy of the foregoing Notice of Service of Answers to Plaintiff's First Set of Interrogatories and Response to First Request for Production of Documents was mailed first class, postage prepaid to the following counsel of record on the 13<sup>th</sup> day of December, 2001:

Philip A. Fabiano, Esquire  
Howard F. Messer, P.C.  
310 Grant Street  
Suite 530 Grant Building  
Pittsburgh, PA 15219

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie  
1010 Two Chatham Center  
Pittsburgh, PA 15222

Patrick Stapleton, III, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
1811 Chestnut Street  
Philadelphia, PA 19103

GROGAN GRAFFAM MCGINLEY, P.C.

By: Joseph A. Macerelli  
JOSEPH A. MACERELLI, ESQUIRE

FILED

NO  
DEC 17 2001

William A. Shaw  
Prothonotary

cc  
[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

v.

PRAVIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; and  
CLEARFIELD HOSPITAL

Defendants.

CIVIL DIVISION

NO. 01-1025-CD

**DEFENDANT CLEARFIELD  
HOSPITAL'S NOTICE OF SERVICE  
OF RESPONSES TO PLAINTIFF'S  
DISCOVERY REQUESTS**

Filed on Behalf of Defendant, Clearfield  
Hospital

Counsel of record for this party:

Patrick J. Stapleton, III, Esquire  
Pa. I.D. No.: 38057

Samuel H. Foreman, Esquire  
Pa. I.D. No.: 77096

WEBER GALLAGHER SIMPSON  
STAPLETON FIRES & NEWBY LLP  
Firm No. 594

Two Gateway Center - Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222

(412) 281-4541  
(412) 281-4547 FAX

**JURY TRIAL DEMANDED**

**FILED**

JUL 15 2002  
m/1:46/no cc  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
RACHEL TRAVENY, CIVIL DIVISION

Plaintiff,

NO. 01-1025-CD

v.

PRAXIDIO H. TAGALA, M.D.; ROBERTO  
LUNA, M.D.; and CLEARFIELD  
HOSPITAL

Defendants.

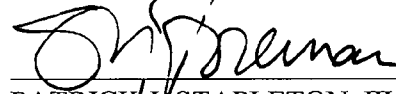
**DEFENDANT CLEARFIELD HOSPITAL'S NOTICE OF SERVICE OF RESPONSES  
TO PLAINTIFF'S DISCOVERY REQUESTS**

AND NOW, comes the defendant, CLEARFIELD HOSPITAL, by and through his attorneys  
WEBER GOLDSTEIN GREENBERG & GALLAGHER, LLP, and notifies the Court that Defendant's  
Responses to Plaintiff's First Set of Requests for Production of Documents and Defendant's Answers to  
Plaintiff's First Set of Interrogatories has been served upon the Plaintiff, RACHEL TRAVENY, by mailing  
an original of same to Plaintiffs' counsel.

Respectfully Submitted,

WEBER GALLAGHER SIMPSON  
STAPLETON FIRES & NEWBY LLP

BY:



PATRICK J. STAPLETON, III, ESQUIRE  
SAMUEL H. FOREMAN, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

Two Gateway Center  
Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222  
(412) 281-4541



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **DEFENDANT CLEARFIELD HOSPITAL'S NOTICE OF SERVICE OF RESPONSES TO PLAINTIFF'S DISCOVERY REQUESTS** has been served on the following counsel of record by U.S. first class mail, postage prepaid on this 10th day of July, 2002:

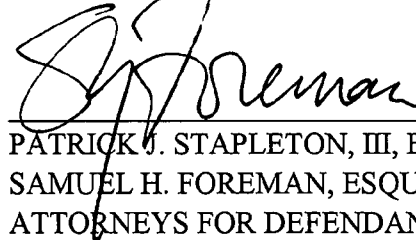
Howard F. Messer, Esquire  
Philip A. Fabiano, Esquire  
Howard Messer & Associates  
310 Grant Street  
Grant Building, Suite 530  
Pittsburgh, PA 15219-2301  
***PLAINTIFF'S COUNSEL***

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
***COUNSEL FOR PRAXIDIO H. TAGALA, M.D.***

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
***COUNSEL FOR ROBERTO LUNA, M.D.***

WEBER GALLAGHER SIMPSON  
STAPLETON FIRES & NEWBY LLP

BY:



PATRICK J. STAPLETON, III, ESQUIRE  
SAMUEL H. FOREMAN, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

CIVIL DIVISION

No. 01-1025-CD

Issue No.

**MOTION TO DISMISS DEFENDANT  
PURSUANT TO Pa R.C.P. 1036**

Code:

Filed on behalf of Roberto Luna, M.D., one of  
the defendants

Counsel of Record for this Party:

James R. Hartline, Esquire  
PA I.D. #21299

Geraldine M. Linn, Esquire  
PA I.D. #83351

Thomson, Rhodes & Cowie, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED**

JUL 15 2002 *Ews*  
m/l/b/noc  
William A. Shaw  
Prothonotary

**MOTION TO DISMISS DEFENDANT PURSUANT TO Pa R.C.P. 1036**

AND NOW comes, Roberto S. Luna, M.D., one of the defendants, by and through his attorneys, Thomson, Rhodes & Cowie, P.C., and presents the within Motion to Dismiss, averring as follows:

1. Plaintiff initiated the present medical malpractice action in which she alleges that she has underwent a hysterectomy that was not medically indicated.

2. Defendant Dr. Luna did not examine, treat or evaluate the plaintiff.

3. Defendant Dr. Luna did not participate in the determination to perform the abdominal hysterectomy on the plaintiff, nor was it ever his duty or responsible to make this determination.

4. Defendant Dr. Luna did not participate in any of the negligent acts alleged in plaintiff's complaint.

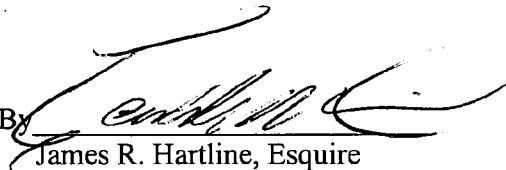
5. Defendant Dr. Luna has properly executed an Affidavit of Non-Involvement verifying his lack of participation in this matter.

6. Pursuant to Pennsylvania Rule of Civil Procedure 1036, this defendant has attached a copy of said Affidavit in support of this motion to dismiss.

WHEREFORE, this Defendant, Roberto S. Luna, M.D., respectfully requests that this Honorable Court dismiss him with prejudice from the matter.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

By   
James R. Hartline, Esquire  
Geraldine M. Linn, Esquire  
Attorneys for the defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RACHEL TRAVENY,

CIVIL DIVISION

Plaintiff,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

AFFIDAVIT OF NON-INVOLVEMENT  
PURSUANT TO 40 P.S. §1303.506

1. I verify that I am a medical doctor, licensed to practice medicine in the state of Pennsylvania.

2. I verify that at all times relevant to the incident in question, I was a licensed medical doctor.

3. I verify that at no time pertinent to this lawsuit was I the attending physician for the plaintiff, Rachel Traveny.

4. I verify that I did not examine, treat or evaluate the plaintiff, Rachel Traveny, in connection with the determination to perform an abdominal hysterectomy on December 12, 1985.

5. I verify that at no time, nor in any way, was I involved in determining whether an abdominal hysterectomy or any other type of surgery or any other medical treatment should be performed upon or provided to the plaintiff, Rachel Traveny.

6. I verify that I was not involved in any of the alleged negligent care and treatment of the plaintiff, including the allegations specifically set forth in Paragraphs 34 (a)-(mm) and 42-46 of plaintiff's complaint.

7. I verify that my sole involvement with the plaintiff was as a surgical assistant to Dr. Tagala during his performance of the abdominal hysterectomy upon the plaintiff on December 12, 1985. Such assistance was rendered at the request of Dr. Tagala who was the plaintiff's attending physician and surgeon.

Roberto S. Luna M.D.

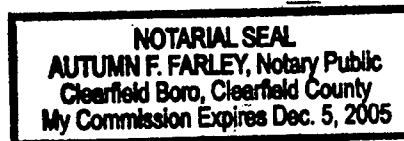
Roberto S. Luna, M.D.

Witness:

Autumn F. Farley

Sworn to and subscribed to before me

this 14th day of May,  
2002.



Autumn F. Farley  
Notary Public

**CERTIFICATION OF SERVICE**

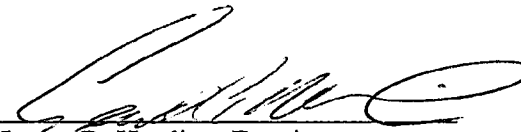
I hereby certify that a true and correct copy of the within MOTION TO DISMISS  
DEFENDANT PURSUANT TO Pa R.C.P. 1036 has been served upon the following counsel of  
record on this 12<sup>th</sup> day of July, 2002:

Philip A. Fabiano, Esquire  
Howard Messer & Associates  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(Attorneys for plaintiff)

Joseph A. Macerelli, Esquire  
Grogan, Graffam & McGinley, P.C.  
Three Gateway Center, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
(Attorneys for defendant Praxidio Tagala, M.D.)

Patrick Stapleton, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
Union National Bank Building  
Suite 1410, 306 Fourth Avenue  
Pittsburgh, PA 15222  
(Attorneys for defendant Clearfield Hospital)

THOMSON, RHODES & COWIE, P.C.

By   
James R. Hartline, Esquire  
Geraldine M. Linn, Esquire  
Attorneys for defendant  
Roberto Luna, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RACHEL TRAVENY,

CIVIL DIVISION

Plaintiff,

No. 01-1025-CD

vs.

Issue No.

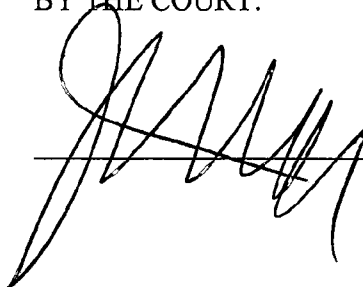
PRAXIDIO H. TAGALA, M.D.,  
ROBERTO LUNA, M.D. and  
CLEARFIELD HOSPITAL,

Defendants

**SCHEDULING ORDER**

AND NOW, on this 16<sup>th</sup> day of July, 2002, it is hereby  
ORDERED, ADJUDGED and DECREED that oral argument for defendant's Motion to  
Dismiss Pursuant to Pa.R.C.P. 1036 has been scheduled for September 5, 2002  
at 10:30 a.m./~~pm~~, in Courtroom 1, before the undersigned.

BY THE COURT:

 J.

**FILED**

JUL 16 2002

01113913cc atty Hartline  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY,

Plaintiff,

v.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; and  
CLEARFIELD HOSPITAL

Defendants.

CIVIL DIVISION

NO. 01-1025-CD

**DEFENDANT CLEARFIELD  
HOSPITAL'S NOTICE OF SERVICE  
OF DISCOVERY REQUESTS TO  
PLAINTIFF**

Filed on Behalf of Defendant, Clearfield  
Hospital

Counsel of record for this party:

Patrick J. Stapleton, III, Esquire  
Pa. I.D. No.: 38057

Samuel H. Foreman, Esquire  
Pa. I.D. No.: 77096

WEBER GALLAGHER SIMPSON  
STAPLETON FIRES & NEWBY LLP  
Firm No. 594

Two Gateway Center - Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222

(412) 281-4541  
(412) 281-4547 FAX

**JURY TRIAL DEMANDED**

**FILED**  
JUL 22 2002  
012:31 NOCC  
William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
RACHEL TRAVENY, CIVIL DIVISION

Plaintiff,

NO. 01-1025-CD

v.

PRAXIDIO H. TAGALA, M.D.; ROBERTO  
LUNA, M.D.; and CLEARFIELD  
HOSPITAL

Defendants.

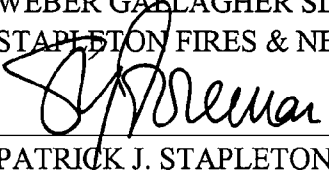
**DEFENDANT CLEARFIELD HOSPITAL'S NOTICE OF SERVICE OF RESPONSES  
TO PLAINTIFF'S DISCOVERY REQUESTS**

AND NOW, comes the defendant, CLEARFIELD HOSPITAL, by and through his attorneys  
WEBER GOLDSTEIN GREENBERG & GALLAGHER, LLP, and notifies the Court that Defendant's  
Responses to Plaintiff's First Set of Requests for Production of Documents and Defendant's Answers to  
Plaintiff's First Set of Interrogatories has been served upon the Plaintiff, RACHEL TRAVENY, by mailing  
an original of same to Plaintiffs' counsel.

Respectfully Submitted,

WEBER GALLAGHER SIMPSON  
STAPLETON FIRES & NEWBY LLP

BY:

  
PATRICK J. STAPLETON, III, ESQUIRE  
SAMUEL H. FOREMAN, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

Two Gateway Center  
Suite 1450  
603 Stanwix Street  
Pittsburgh, PA 15222  
(412) 281-4541

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within **DEFENDANT CLEARFIELD HOSPITAL'S NOTICE OF SERVICE OF DISCOVERY REQUESTS TO PLAINTIFF** has been served on the following counsel of record by U.S. first class mail, postage prepaid on this 19 day of July, 2002:

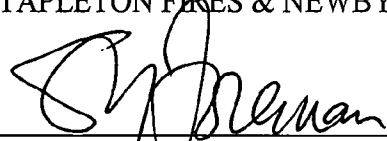
Howard F. Messer, Esquire  
Philip A. Fabiano, Esquire  
Howard Messer & Associates  
310 Grant Street  
Grant Building, Suite 530  
Pittsburgh, PA 15219-2301  
***PLAINTIFF'S COUNSEL***

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
***COUNSEL FOR PRAXIDIO H. TAGALA, M.D.***

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219  
***COUNSEL FOR ROBERTO LUNA, M.D.***

WEBER GALLAGHER SIMPSON  
STAPLETON FRIES & NEWBY LLP

BY:

  
PATRICK J. STAPLETON, III, ESQUIRE  
SAMUEL H. FOREMAN, ESQUIRE  
ATTORNEYS FOR DEFENDANT,  
CLEARFIELD HOSPITAL

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

**STIPULATION AND CONSENT TO  
THE DISCONTINUANCE OF  
PLAINTIFF'S CLAIMS AGAINST  
DEFENDANTS**

Defendants.

Filed on Behalf of Plaintiff

Counsel of Record for This Party:

HOWARD F. MESSER, ESQUIRE  
Pa. I.D. No. 10023

PHILIP A. FABIANO, ESQUIRE  
Pa. I.D. No. 44751

HOWARD MESSER & ASSOCIATES  
310 Grant Street  
Suite 530, Grant Building  
Pittsburgh, PA 15219-2301  
(412) 281-7200

**JURY TRIAL DEMANDED**

**FILED**

AUG 15 2002

m/11/20/10CC Cert. Doc. to

William A. Shaw  
Prothonotary

Atty

Copy CA

KEA

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

RACHEL TRAVENY

CIVIL DIVISION

Plaintiffs,

No. 01-1025-CD

vs.

PRAXIDIO H. TAGALA, M.D.;  
ROBERTO LUNA, M.D.; AND  
CLEARFIELD HOSPITAL,

Defendants.

**STIPULATION AND CONSENT  
TO THE DISCONTINUANCE OF  
PLAINTIFFS' CLAIMS AGAINST DEFENDANTS**

TO THE PROTHONOTARY:

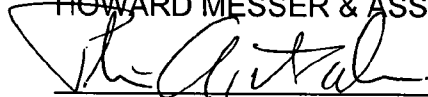
AND NOW COMES plaintiff, Rachel Traveny by and through her attorneys, Howard Messer & Associates and Philip A. Fabiano, Esquire and pursuant to Pennsylvania Rule of Civil Procedures 229 et. seq., hereby stipulates to the discontinuance of all claims against all the defendants.

This claim does not involve a minor or incompetent party.

Kindly mark this claim discontinued.

Respectfully submitted,

HOWARD MESSER & ASSOCIATES



Philip A. Fabiano  
Attorney for Plaintiff  
310 Grant Street  
Suite 530 Grant Building  
Pittsburgh, PA 15219  
(412) 281-7200

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and correct copy of the foregoing **STIPULATION AND  
CONSENT TO THE DISCONTINUANCE OF PLAINTIFFS' CLAIMS AGAINST  
DEFENDANTS**, has been served this 12 day of August, 2002, by U.S. first-class  
mail, postage prepaid, to:

Joseph A. Macerelli, Esquire  
Grogan Graffam McGinley, P.C.  
Three Gateway Center  
22<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
**Attorneys for Defendant  
Praxidio H. Tagala, M.D.**

James R. Hartline, Esquire  
Thomson, Rhodes & Cowie  
1010 Two Chatham Center  
Pittsburgh, PA 15222  
**Attorneys for Defendant  
Roberto Luna, M.D.**

Patrick Stapleton, III, Esquire  
Weber, Goldstein, Greenberg & Gallagher  
1811 Chestnut Street  
Philadelphia, PA 19103  
**Attorneys for Defendant  
Clearfield Hospital**



Philip A. Fabiano

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Rachel Traveny

Vs.

No. 2001-01025-CD

Praxidio H. Tagala MD  
Roberto Luna MD  
Clearfield Hospital

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 15, 2002 marked:

Discontinued

Record costs in the sum of \$144.09 have been paid in full by Philip A. Fabiano, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of August A.D. 2002.



---

William A. Shaw, Prothonotary