SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WILMER PEREZ MELCHOR,

Plaintiff,

-against-

NORTH AVENUE EAST LLC,

Defendants.

----------X

**NOTICE OF MEDICAL EXCHANGE**

Index No.: 59061/19

**C O U N S E L O R S:**

**PLEASE TAKE NOTICE**, that pursuant to the rules of this court regarding Exchange of Medical Information, attached is the narrative report of Jeffrey Kaplan, M.D. dated May 18, 2023.

Plaintiff reserves the right to amend and supplement the foregoing up to and including the time of trial.

DATED: New York, New York
June 13, 2023

Yours, etc.

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May 18, 2023

**Re: WILMER PEREZ**

Wilmer Perez is seen for orthopedic re-evaluation on 5/18/23 for injuries sustained in a fall from a height while at work on 12/18/18. He sustained an open fracture of the right tibia. He was initially treated at Jacobi Hospital where he was admitted and required surgical irrigation and debridement as well as an open reduction and internal fixation of the right tibia with an intra-medullary nail on 12/19/18 with Dr. Milan Sen. He required a second surgery on 1/25/19 for bone grafting from the right iliac crest to the fracture site at the tibia.

Mr. Perez came under the care of orthopedic surgeon, Dr. Ashley Simela for injuries to the right lower extremity, neck, low back, right shoulder, and left shoulder. He required a period of non-weight bearing to the right lower extremity. He required a bone stimulator to promote healing of the fracture site. He was prescribed a cane. He was provided with prescriptions for physical therapy. He was referred for electrodiagnostic studies as well as MRIs of the neck, low back, right shoulder and left shoulders. He was advised for cervical epidural injections

Additionally, he came under the care of neurologist, Dr. Paul Lerner, MD for treatment of seizures since the time of the accident. He was referred for a brain MRI and EEG. Lamotrigine starter pack was prescribed.

Upon initial evaluation in this office on 2/21/19, he complained of pain at the right lower extremity at the mid shaft tibia. He complained of limited motion at the ankle. He complained of knee pain. He had burning of the left distal thigh to the site of the bone graft harvest at the right pelvis. He complains of right shoulder and right arm pain. This is primarily at his axilla associated with pain and numbness. He complained of severe neck pain and pain radiating to the head. He had a heavy feeling when he sits up for any period of time with neck fatigue. He was non-weightbearing at the right lower extremity with crutches. He was advised to continue with his operative surgeon. He was referred for imaging studies of the cervical spine and right shoulder. He was advised to bring in medical records so that I may continue his care.

Medical records have been forwarded to this office for review:

Hospital Records, Jacobi Medical Center, dated 12/18/18, indicate history of injury as "Pt is a 26 yo M with no significant PMH BIBA s/p fall from a construction site today. Per EMS and brother, pt was working and fell about 25 feet into a foundation. Per brother, pt fell head first. Pt was extricated from the site and was found to have an open wound on the R shin which was actively bleeding. EMS placed tourniquet to stop the bleed." X-rays and CT scan of the right lower extremity revealed "Severely comminuted open mid tibial shaft fracture". Patient complained of right shoulder pain. X-rays of the right arm revealed no fractures. Patient was admitted to trauma service for a right open tibia/fibula fracture. On 12/19/18, he required a right tibial IM nail, antibiotic bead placement, tibial I&D, and tibial wound vac placement. Patient was discharged home in a wheelchair.

Operative report, Surgeon: Milan Sen, MD, dated 12/19/18, indicates pre-operative diagnosis of "Right grade 2 open segmental tibia fracture." The surgery performed was "1. Right leg irrigation and debridement of soft tissue and bone associated with open fracture. 2. Right tibia intramedullary nail fixation. 3. Insertion of antibiotic delivery implant. 4. Negative -pressure wound therapy, less than 50 sq cm."

Operative Report, Jacobi Medical Center, Surgeon: Milan Sen, MD, dated 1/25/19, indicates pre-operative diagnosis of "delayed union, right tibia." The surgery performed was "1. Exchange of nail in right tibia 2. Right iliac crest bone graft to right tibia. 2. Insertion of anti-biotic drug delivery implant to right tibia."

Discharge records from Jacobi Medical Center, dated 12/18/18, indicates patient was treated open right tibia fracture. He was admitted to orthopedic surgery service and required a right tibial I&D, intramedullary nailing, stimulant bead and incisional VAC placement on 12/19/18. He was discharged in a wheelchair. Discharged to PT/OT/rehab. He was discharged with prescriptions for Percocet and Aspirin. He was advised to follow up with orthopedic surgery.

Office records from Rehabilitation Medicine Center of New York, Dr. Ashley Simela, D.O., dated 3/6/19-3/4/20, indicating patient was treated for complaints of right lower extremity pain, status post open reduction of right tibia open fracture, bilateral shoulder pain, neck and low back pain. Treatment has included referrals for MRIs of the neck, low back, right and left shoulder. He was referred for interval X-rays of the right tibia/fibula. A note from 3/27/19 indicates concern of non-union of the right tibia fracture. Dr. Simela ordered a bone stimulator to promote healing. Dynamization of the fracture was discussed. He was prescribed a cane. Subsequent visits indicate that his healing progressed. He eventually transitioned to full weight bearing status. Dr. Simela indicated no need for additional surgery other than possible hardware removal in the future.

Additionally, He was advised for cervical epidural injections. He was referred for electrodiagnostic studies.

Operative Report, Empire State Ambulatory Surgery Center, Surgeon: Edwin Perez, MD, dated 11/12/19 indicating patient underwent a cervical epidural injection.

Neurology office Records, Paul Lerner, M.D., dated 9/22/20, indicating patient complained of depression and anxiety. He reported convulsions. He was referred for a brain MRI and EEG. Lamotrigine starter pack was prescribed.

X-ray of the right tibia and fibula, dated 2/25/20, reveals "1. Post surgical changes at the mid tibia with an intramedullary rod as described. Correlation with previous surgical history is recommended."

X-ray of the right foot, dated 2/25/20, reveals "1. Mild hallux valgus deformity with mild arthrosis of the first metatarsophalangeal joint and first interphalangeal joint 2. Tiny plantar calcaneal spur as well as a tiny osteophyte off the anterior aspect of the articular surface of the distal tibia. 3. Intramedullary rod within the distal tibia."

X-ray of the right ankle, tibia, fibula, dated 3/26/19, reveals "Status post ORIF of mid tibia shaft fracture as discussed above."

MRI of the right shoulder, dated 3/26/19, reveals "1. Supraspinatus tendinosis; subacromial subdeltoid bursal fluid 2. Long head biceps tendinosis 3. Acromioclavicular joint osteoarthropathy."

X-ray of the right femur, dated 3/26/19, reveals "No acute findings; periarticular demineralization at the knee likely related to disuse and prior trauma which is not imaged-partially imaged tibial IM rod as above."

MRI of the cervical spine, dated 4/24/19, reveals "1.C3-C4 protrusion 2. C5-C6 protrusion 3. T2-T3 bulging."

X-ray of the right tibia/fibula, dated 6/24/19, reveals "No interval change."

X-ray of the right tibia/fibula dated 10/21/19 reveals "IM rod runs the length of the tibia shaft and crosses the defect/mid shaft fracture which is comminuted. Morselized bone graft has been placed at the gap. Hardware is uncomplicated. Near-anatomic alignment is noted."

MRI of the brain dated 2/22/21 reveals "1. Limited evaluation 2. No acute intracranial abnormalities 3. Modest mucosal thickening in the paranasal sinuses, most conspicuous in the left ethmoid and left maxillary sinuses."

CT of the right tibia and fibula, dated 2/22/21, reveals "tibial diaphyseal fracture status post intramedullary fixation and bone grafting. Persistent osseous gapping at the diaphyseal fracture margins as well as partial nonunion of a dominant fracture fragment at the posterior lateral margin of the fracture site."

Currently, Mr. Perez continues to complain of right lower extremity pain. He complains of swelling at the anterior right leg in the area of the fracture. He has difficulty with attempts of initiating motion and long periods of walking. He complains of stiffness of the right knee and right ankle. He complains of locking of the right knee. He has complaints of pain int eh neck radiating into the right and left shoulders. He continues to treatment with neurologist, Dr. Nisali Gunawardane and a psychiatrist. He is prescribed Levetiracetam and Sertraline.

Past medical history is non-contributory.

Physical Examination today reveals the following:

He has an antalgic gait, stance, and posture.

At the right lower extremity, there are multiple surgical scars including 11 cm and 8 cm scar at the medial shin. There is a 4 cm lateral scar at the knee and 5 cm suprapatellar scar. There is a 9 cm surgical scar at the right hip at the bone graft site. He scars at the distal and proximal locking screws.

At the knee, flexion is to 125 degrees on the right vs 140 degrees on the left. Extension is full bilaterally. There is marked crepitus with motion on the right that is not present on the left. No instability appreciable bilaterally.

At the ankle, dorsiflexion is to 5 degrees and plantar flexion is 30 degrees. He has pain on the right with inversion and eversion. On the left, dorsiflexion is 20 degrees and plantar flexion is 60 degrees. He has tender prominent hardware at the distal locking screws. There is crepitus with right ankle motion. No gross instability appreciable.

Circumferential measurements taken today of the mid calves at equivalent points is 36.5 cm on the right vs 36 cm on the left. This is due to soft tissue swelling at the mid anterior shin on the right. He has decreased tone in the right calf musculature compared to the left.

Circumferential measurements taken today at the thighs at equivalent points is 42.5 cm on the right vs 44 cm on the left.

At the shoulders, abduction is to 170 degrees on the right vs 180 degrees on the left. Internal rotation is to 80 degrees on the right and 100 degrees on the left. External rotation is 90 degrees on the right and 100 degrees on the left. He has

tenderness at the posterior shoulder girdle and subacromial space on the right. Crepitus with motion on the right.

At the lumbar spine, he has tenderness at the lumbar paraspinous musculature. Lumbar flexion is to 55 degrees and extension is 10 degrees. Lateral flexion to the right is 15 degrees and 15 degrees on the left. Straight leg raise is positive to the right.

At the cervical spine, he has tenderness at the cervical paraspinous musculature. Cervical flexion is to 40 degrees and extension is to 40 degrees. Rotation to the right is 50 degrees and rotation to the left is 55 degrees. Spurling maneuver elicits radicular pain to the shoulders bilaterally.

X-rays taken today of the right tibia/fibula, 2 views, show surgical open reduction and internal fixation of the tibia shaft fracture with intramedullary rod fixation. There are 2 locking screws distally and proximally at the tibia. There is extensive callous formation at the tibial shaft fracture and a small fracture gap still present medially. There are irregularities at the articular surface of the distal and proximal tibia that is consistent with post traumatic arthritis. No acute bony changes.

X-rays taken today of the right shoulder, 2 views, show no acute bony changes, no fractures or dislocations.

X-rays taken today of the cervical spine, 2 views, show straightening of the cervical curvature with loss of normal lordosis. No acute bony changes.

X-rays taken today of the lumbar spine, 2 views, show straightening of the lumbar curvature with loss of normal lordosis. No acute bony changes.

DIAGNOSIS: Status post severely comminuted open mid tibial shaft fracture requiring open reduction and internal fixation with intramedullary nail as well as surgical bone grafting from the right iliac crest with exchange nailing

Internal derangement of the right knee

Post traumatic arthritis of the right knee

Internal derangement of the right ankle

Post traumatic arthritis, right ankle

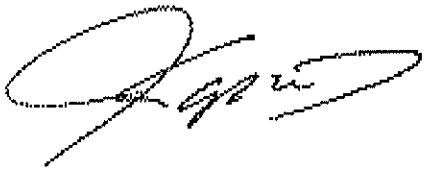
Internal derangement of the right shoulder with supraspinatus tendinosis, subacromial subdeltoid bursal fluid, long head biceps tendinosis and acromioclavicular joint osteoarthropathy, confirmed by MRI

Post traumatic cervical pain with MRI evidence of C3-C4 and C5-C6 protrusion and T2-T3 bulging

Post traumatic lumbar pain with symptoms of radiculopathy

The accident of 12/18/18 is the competent producing cause of the above-mentioned diagnoses as well as the need for extensive treatment and multiple surgeries as outlined above. The post traumatic arthritis of the right knee and right ankle is not only permanent, but progressive in nature and will worsen over time. I have advised him that he is a candidate for surgical evaluation of the right ankle and right knee. This patient requires ongoing treatment with orthopedic surgery and pain management physicians.

Prognosis is poor.



Jeffrey S. Kaplan, M.D.
JSK/ms

*DICTATED BUT NOT READ*
*TO EXPEDITE MAILING*

STATE OF NEW YORK

SS.: **AFFIDAVIT OF SERVICE**

COUNTY OF NEW YORK

I, Karina Flores being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in the County of Middlesex, State of New Jersey.

On June 13, 2023, I served the within **NOTICE OF MEDICAL EXCHANGE** by

☒ **Service by mail** by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth:

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File No.: 26386.787

Karina Flores

Sworn to before me on
June 13, 2023

Notary Public

ANGELA I. L. COLLADO
Commissioner of Deeds
City of New York - No. 2-[illegible]
Certificate Filed in New York
Commission Expires 3/11/24

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