

CAUSE NO. 380-02756-2020

BILL E. PROCTOR	}	IN THE DISTRICT COURT
	}	
<i>Plaintiff,</i>	}	
	}	
v.	}	
	}	
MARK VIKTOR SILVER, M.D.; MARK	}	
VIKTOR SILVER, PLLC; RED RIVER	}	
NEUROSURGICAL, PLLC a/k/a or d/b/a SILVER	}	COLLIN COUNTY, TEXAS
SPINE AND NEUROLOGICAL CENTER;	}	
BHARATHY SUNDARAM, M.D.; TEXOMA	}	
NEUROLOGY ASSOCIATES, P.A., d/b/a TEXAS	}	
INSTITUTE FOR NEUROLOGICAL	}	
DISORDERS; MISTY GREEN; JAMI CASE; and	}	
ADVANCED INTRA-OPERATIVE	}	
MONITORING SPECIALISTS, LLC	}	
	}	
<i>Defendants.</i>	}	380 <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF’S FIRST AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, BILL E. PROCTOR (hereinafter referred to as “Proctor”) complaining of Defendants MARK VIKTOR SILVER, M.D. (hereinafter referred to as “Silver”); MARK VIKTOR SILVER, PLLC (hereinafter referred to as “Silver PLLC”); RED RIVER NEUROSURGICAL, PLLC a/k/a or d/b/a SILVER SPINE AND NEUROLOGICAL CENTER (hereinafter referred to as “SILVER SPINE”); BHARATHY SUNDARAM, M.D. (hereinafter referred to as “SUNDARAM”); TEXOMA NEUROLOGY ASSOCIATES, P.A., d/b/a TEXAS INSTITUTE FOR NEUROLOGICAL DISORDERS (hereinafter referred to as “TEXOMA”); JAMI CASE (hereinafter referred to as “CASE”); and ADVANCED INTRA-OPERATIVE MONITORING SPECIALISTS, LLC (hereinafter referred to as “ADVANCED”). In support of this First Amended Petition, Plaintiff would respectfully show this Court the following:

## I. DISCOVERY CONTROL PLAN

- 1.1 Discovery shall be according to a “Level Three” discovery control plan.
- 1.2 Discovery has previously been served with Plaintiff’s Original Petition.
- 1.3 Each Defendant’s responses to the previously served discovery are due no later than fifty (50) days after service, and the Defendants are reminded of their on-going duty under TEX. R. CIV. P. 193.5 to timely amend or supplement this information in the future.
- 1.4 Each Defendant is notified that Plaintiff may use, without limitation, the documents produced in discovery at pretrial proceedings and trial. TEX. R. CIV. P. 193.7.

## II. PARTIES

- 2.1 Plaintiff Bill Proctor (xxx-xx-6776) is an individual residing in Lamar County, Texas. The last three digits of Bill Proctor’s Texas driver’s license are 438.
- 2.2 **MARK VIKTOR SILVER, M.D.**, is a physician practicing in Collin County, Texas. Silver has been served and has filed an answer.
- 2.3 **MARK VIKTOR SILVER, PLLC**, is a PLLC, in Collin County, Texas. Silver PLLC has been served and has filed an answer.
- 2.4 **RED RIVER NEUROSURGICAL, PLLC**, is a PLLC, doing business as **SILVER SPINE AND NEUROLOGICAL CENTER**, in Grayson County, Texas. Silver Spine has been served and has filed an answer.
- 2.5 **BHARATHY SUNDARAM, M.D.**, is a physician practicing in Grayson County, Texas. Sundaram has been served and has filed an answer.

2.6 **TEXOMA NEUROLOGY ASSOCIATES, P.A., d/b/a, TEXAS INSTITUTE FOR NEUROLOGICAL DISORDERS** is a P.A., doing business in Grayson County, Texas. Texoma has been served and has filed an answer.

2.7 **JAMI CASE, CNIM**, is a CNIM (Certification for Neurophysiological Intraoperative Monitoring), practicing in Grayson County, Texas. Case. Case has been served and has filed an answer.

2.8 **ADVANCED INTRA-OPERATIVE MONITORING SPECIALISTS, LLC**, is an LLC doing business in Grayson County, Texas. Advanced has been served and has filed an answer.

### **III. JURISDICTION AND VENUE**

3.1 The Court has continuing jurisdiction over Defendants, because Defendants are Texas residents, Texas entities, or has a principal place of business in Texas. The Court has jurisdiction over the subject matter because damages are within the statutory jurisdictional limits of the Court. Plaintiff seeks monetary relief over \$1,000,000.00.

3.2 Venue is proper pursuant to TEX. CIV. PRAC. & REM. CODE, SECTION 15.002(a)(2), because one or more of the Defendants reside in Collin County, Texas.

### **IV. PRE-SUIT NOTICE OF CLAIM**

4.1 Plaintiff has provided the Defendants with pre-suit written notice of claim in excess of 60 days prior to filing this lawsuit, as required by TEXAS CIVIL PRACTICE & REMEDIES CODE § 74.051. The statute of limitations has been tolled in this case under Chapter 74 by virtue of the written pre-suit notice given to Defendants **MARK VIKTOR SILVER, M.D., SILVER SPINE AND NEUROLOGICAL CENTER, BHARATHY SUNDARAM, M.D.,** and **TEXOMA NEUROLOGY ASSOCIATES, PA d/b/a TEXAS INSTITUTE FOR NEUROLOGICAL**

**DISORDERS** on April 4, 2019. Defendants **ADVANCED INTRA-OPERATIVE MONITORING SPECIALISTS** and **JAMI CASE, CNIM**, were given pre-suit notice on April 10, 2019.

If for any reason it is determined that pre-suit written notice has not been given, then this lawsuit shall have the effect of giving such notice.

## **V. RELEVANT BACKGROUND**

5.1 Bill E. Proctor is a 57-year-old patient who experienced low back pain. After consulting with an neurosurgeon, Mark Viktor Silver, M.D., Bill is told that he needs elective surgery on his lumbar spine. Bill is scheduled for surgery on March 22, 2018, at Wilson N. Jones Regional Medical Center in Sherman, Texas. The surgery to be performed will be at levels L2-3, and L3-4, and is known as a Laminectomy Lumbar Fusion.

### **A. NEUROMONITORING**

5.2 There is neuromonitoring involved with Bill's surgery. Advanced Intra-Operative Monitoring Specialists provided the intraoperative neuromonitoring which included somatosensory evoked potentials (SEP or SSEPs) to monitor the functional integrity of the somatosensory pathways, transcranial electrical motor evoked potentials (tceMEPs or MEPs) to monitor the functional integrity of the motor pathways, and electromyography (EMG) to detect spontaneous activity. Neuromonitoring is commonly conducted during spinal surgeries in order to detect, interpret, and communicate changes in nerve conduction so that the surgeon can take corrective action in a timely manner in order to avoid permanent injury and deficits to the patient.

5.3 The intraoperative neuromonitoring technician, Jami Case, is in the operating room for purposes of monitoring Bill Proctor to detect and identify any significant changes in his SSEPs,

MEPs, or EMG during surgery. During the relevant times involving the treatment and monitoring of Bill, Case is an employee in the course and scope of her employment with Advanced Intra Operative Monitoring Specialists. Therefore, Advanced Intra-Operative Monitoring Specialists is vicariously liable for the conduct of Jami Case.

5.4 A supervising physician of Jami Case is Bharathy Sundaram, MD. She is required to be an interpreting physician who is off-site from the hospital, and she has the capability to connect at the beginning of the surgery via a host-remote live feed that enables her to view all relevant data in real time. Sundaram and Case also have the ability to communicate by a “live chat” format, as well as cell phone communication. During the relevant times involving the treatment and monitoring of Bill, Sundaram is an employee in the course and scope of her employment with Texoma Neurology Associates. Therefore, Texoma Neurology is vicariously liable for the conduct of Dr. Sundaram.

5.5 As a neuromonitoring technician, Case is required to stay in communication with Sundaram and to notify Sundaram of any significant changes in the monitoring process so that the source of a problem can be identified by the surgeon and corrected in a timely manner to prevent permanent injury to the patient. Additionally, Case is required to communicate to the surgeon, in the event the supervising physician is non-responsive to neurological changes in the patient or if the supervising physician fails to monitor or interpret the changes, as necessary to protect the patient from permanent neurological injury.

5.6 As a remote monitoring and supervising physician, Sundaram is to be aware of any significant changes in the monitoring process, and is to communicate such changes to Silver, as well as giving Silver her interpretation of the changes, along with limited recommendations regarding the treatment of the patient to prevent permanent injury.

5.7 The surgery takes place with Case and Sundaram acting as the neuromonitoring team. During the procedure, Bill loses both SEP and MEP neuromonitoring signals in his legs. The record entries from Case indicate a loss of signal. Bill comes out of the surgery with significant numbness and foot drop.

## **B. THE SURGERY**

5.8 According to the Wilson Jones Regional Hospital surgery record, the surgery of March 22, 2018, begins at approximately 2:07 p.m. It starts at the L2-3 level, with the procedure at that level occurring without neuromonitoring or surgical consequences.

5.9 As shown below regarding neuromonitoring during surgery, there was a loss of SSEP signal at 19:07. This was at a critical time during the surgery.

## **VI. NEUROMONITORING DURING SURGERY**

6.1 The intraoperative neurophysiologic monitoring (“IONM”) team during the surgery of Bill Proctor on March 22, 2018, consists of Jami Case, CNIM, and Dr. Bharathy Sundaram. The IONM team monitors the state of the nervous system in “real-time” during surgery and alerts the surgeon of potential evolving neurologic injury and may allow for corrective actions to be implemented to prevent permanent deficits, thus improving safety and surgical outcomes. The efficiency and value of the IONM team is directly related to the team’s ability to effectively monitor and communicate the patient’s real-time nervous system changes.

6.2 During surgery at 18:59, there was a comment in the logs noting that the surgeon was “placing the first interbody.” At 19:07, there was a comment in the log that “anesthesia had increased gas during interbody placement possibly affecting SSEPs.” After review of the SSEPs done at 19:02 a significant decline in the subcortical signals with a mild decline in the cortical

signals was found in both legs. This change was not noted in the intraoperative neuromonitoring logs. Review of the lower extremity SSEPs, done at 19:08, found complete loss of the bilateral subcortical signals with loss of left cortical signal, and a significant decline to below standard threshold alert criteria (i.e., < 50% decline from baseline amplitude) on the right. Once again, this information was not noted in the intraoperative neuromonitoring logs. In addition, the right leg SSEP signals were delayed in appearance meeting standard alert criteria for latency prolongation (i.e., > 10% increase from baseline latency).

6.3 Contrary to the standard of care, no comments were found in the intraoperative neuromonitoring logs that these SSEP changes were interpreted by the oversight neurologist, Dr. Sundaram, as shown below.

15:12:00	Medium	STARTING ON SCREW PLACEMENT
15:53:11	Medium	STILL WORKING ON SCREW PLACEMENT
16:11:31	Medium	ALL SCREWS IN PLACE
16:11:44	Medium	STARTING ON DECOMPRESSION
17:19:58	Medium	USING TRIALS
18:24:25	Medium	DECOMPRESSING 2ND LEVEL
18:56:23	Medium	ALL SCREWS TESTED ABOVE 26MA
18:59:00	Medium	PLACING FIRST INTERBODY
19:07:08	Medium	ANESTHESIA INCREASED GAS DURING INTERBODY PLACEMENT POSSIBLY AFFECTING SSEPS
19:07:52	Medium	SEVOFLURANE 1.7 (0.81) PROPOFOL 25MCG, BP 111/62, HR 85
19:16:22	Medium	REPOSITIONED INTERBODY
19:18:03	Medium	PLACING 2ND INTERBODY
19:20:15	Medium	BOTH INTERBODIES IN PLACE
19:20:31	Medium	ANESTHETIC AS BEEN TURNED BACK DOWN
19:21:00	Medium	SEVOFLURANE 0.93 (0.43), BP 122/54, HR 87
19:38:01	Medium	PLACING RODS AND TIGHTENING SCREWS
19:52:29	Medium	PLACING DRAIN
20:01:05	Medium	CLOSING

Instead, Dr. Sundaram’s record, which is not dated, states “No EMG activity during procedure. Median Ulnar Nerve SSEP and Posterior tibial nerve SSEP, both cervical and cortical are [blank]...” This document is signed by Dr. Sundaram and fails to show that any neuromonitoring

changes occurred during Bill Proctor's operation. Contrary to the standard of care, there is no record of real-time communication occurring between Dr. Sundaram and the on-site technologist.

**VII. CAUSE OF ACTION – NEGLIGENCE OF MARK VIKTOR SILVER, M.D.  
CREATING VICARIOUS LIABILITY ON RED RIVER NEUROSURGICAL, PLLC  
D/B/A SILVER SPINE AND NEUROLOGICAL CENTER**

7.1 At all times relevant to these claims, Silver owed a duty to Bill Proctor to exercise reasonable care in providing neurosurgical care. His care and supervision fell below the accepted standards of care.

7.2 **SILVER** was negligent in one or more of the following respects:

- (a) Causing an injury to Bill Proctor's spinal cord and/or spinal nerves during the surgery;
- (b) Failing to prevent nerve injury with appropriate visualization, retraction, and protection of the nerve roots;
- (c) Failing to provide follow-up care to Bill Proctor for at least two and a half days post-surgery;
- (d) Failing to timely recognize the injury to Bill Proctor's spinal cord and/or nerve roots; and
- (e) Failing to timely take corrective action to prevent ongoing injury to Bill Proctor's spinal cord.

7.3 But for such negligence of Silver, Bill Proctor would not have been rendered unable to walk and suffer other serious and permanent injuries. Such negligence, either independently or collectively, was a proximate cause of the injuries and damages to Mr. Proctor.

7.4 At all pertinent times Silver was an agent, employee, servant, representative, member, officer, director, and/or partner of Red River Neurosurgical, PLLC, d/b/a Silver Spine and Neurological Center, and was acting within the course and scope of his employment at all pertinent times. As such, Red River Neurosurgical, PLLC, d/b/a Silver Spine and Neurological Center is

responsible for the negligence of Silver under the doctrine of *respondeat superior*, creating vicarious liability.

**VIII. CAUSE OF ACTION – NEGLIGENCE OF CASE**  
**CREATING VICARIOUS LIABILITY FOR ADVANCED INTRA-OPERATIVE**  
**MONITORING SPECIALISTS**

8.1 At all times relevant to these claims, Case owed a duty to Bill Proctor to exercise reasonable care in providing medical evaluations and medical care and treatment. The neuromonitoring and care by Case fell below the accepted standards of care.

8.2 Case was negligent in one or more of the following respects:

- (a) Failing to continuously observe the neuromonitoring status of Bill Proctor;
- (b) Failing to timely and appropriately communicate significant neuromonitoring changes in Bill Proctor to Sundaram; and
- (c) Failing to timely and appropriately communicate significant neuromonitoring changes in Bill Proctor to Silver.
- (d) As an owner, failing to ensure that adequate policies and procedures were in place to communicate in real-time with the supervising physician and to protect Bill Proctor during his spinal surgery.

But for such negligence of Case, Bill would not have been rendered unable to walk and suffered other serious and permanent injuries. Such negligence, either independently or collectively, was a proximate cause of the injuries and damages to Mr. Proctor.

8.3 At all pertinent times Case was an agent, employee, servant, representative, member, officer, director, and/or partner of Advanced Intra-Operative Monitoring Specialists and was acting within the course and scope of her employment at all pertinent times. As such, Advanced Intra-Operative Monitoring Specialists, is responsible for the negligence of Case under the doctrine of *respondeat superior*, creating vicarious liability.

**IX. CAUSE OF ACTION – NEGLIGENCE OF SUNDARAM CREATING VICARIOUS  
LIABILITY OF TEXOMA NEUROLOGY, P.A**

9.1 At all times relevant to these claims, Sundaram owed a duty to Bill Proctor to exercise reasonable care in providing neuromonitoring care and supervision. Her neuromonitoring care and supervision fell below the accepted standards of care.

9.2 **SUNDARAM** was negligent in one or more of the following respects:

- (a) Failing to review or understand Bill Proctor’s medical history prior to the surgery;
- (b) Failing to continuously observe the neuromonitoring status of Bill Proctor;
- (c) Failing to let Case know that Sundaram was not going to be continuously observing the neuromonitoring status of Bill Proctor;
- (d) Failing to let Silver know that Sundaram was not going to be continuously observing the neuromonitoring status of Bill Proctor;
- (e) Failing to timely and appropriately communicate significant neuromonitoring changes to Case during Bill’s surgery;
- (f) Failing to timely and appropriately communicate significant neuromonitoring changes to Silver during Bill’s surgery;
- (g) Failing to provide a timely and appropriately interpretation of the neuromonitoring changes to Case during Bill’s surgery;
- (h) Failing to provide a timely and appropriately interpretation of the neuromonitoring changes to Silver during Bill’s surgery;
- (i) Failing to provide a timely and appropriately interpretation of the neuromonitoring changes to the anesthesiologist during Bill’s surgery;
- (j) Failing to provide appropriate and adequate supervision to Case during Bill’s surgery;
- (k) Failing to ensure that there were adequate policies and procedures in place for neuromonitoring during Bill’s surgery; and

- (1) Failing to ensure that Case was adequately trained regarding the policies and procedures in place for neuromonitoring during Bill's surgery;

9.3 But for such negligence of Sundaram, Bill Proctor would not have been rendered unable to walk and suffer other serious and permanent injuries. Such negligence, either independently or collectively, was a proximate cause of the injuries and damages to Mr. Proctor.

9.4 At all pertinent times Sundaram was an agent, employee, servant, representative, member, officer, director, and/or partner of Texoma Neurology, P.A., and was acting within the course and scope of her employment at all pertinent times. As such, Texoma Neurology, P.A., is responsible for the negligence of Sundaram under the doctrine of *respondeat superior*, creating vicarious liability.

**X. GROSS NEGLIGENCE OF DEFENDANTS JAMIE CASE  
AND BHARATHY SUNDARAM, MD.**

10.1 Defendants Jamie Case and Dr. Bharathy Sundaram acted with gross negligence during the intraoperative neuromonitoring of Bill Proctor. Such conduct during the course of Mr. Proctor's surgery was reckless and performed with a conscious indifference to the safety or well-being of Mr. Proctor during this risky spinal operation. Both Jami Case and Bharathy Sundaram, MD, failed to properly monitor and communicate the neuromonitoring changes during Dr. Silver's operation on Bill Proctor's spine.

10.2 As stated above, Jamie Case failed ensure that the supervising neuromonitoring physician was actively engaged in real-time monitoring and interpretation, failed to communicate significant neurological changes to Dr. Sundaram and Dr. Silver, improperly interpreted neuromonitoring data for which she was unqualified and for which she misinterpreted said data, and failed to properly identify, investigate and report that Bill Proctor's neurological signals were

significantly compromised and changed during the course of his operation which prevented Dr. Silver from being able to take any action aimed at preventing further or permanent neurological injury after Dr. Silver negligently injured Bill Proctor's spinal nerves.

10.3 Dr. Sundaram failed to perform any duties as the supervising off-site neuromonitoring physician. She failed to monitor Bill Proctor's case at any time during his operation, but specifically in real-time, and she failed to interpret and report significant, ongoing, and real-time neurological changes to Dr. Silver or Jamie Case at a time when Dr. Silver may have been able to prevent further or permanent neurological injury to Bill Proctor after Dr. Silver negligently injured Bill Proctor's spinal nerves.

10.4 Such conduct by both Jamie Case and Dr. Sundaram, when viewed objectively, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Bill Proctor, and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Mr. Proctor. Defendants are liable for gross negligence as that term is defined in law.

## **XI. DAMAGES**

11.1 There are certain elements of damages provided by law, that Bill Proctor is entitled to have a jury in this case separately consider in order to determine the sum of money for each element that will fairly and reasonably compensate Bill Proctor for the damages and losses incurred and to be incurred.

11.2 From the time of the negligence until the time of trial in this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate Bill Proctor for each element sustained in the past

are as follows:

- (a) The physical pain that Bill Proctor has suffered in the past up to the time of trial;
- (b) The mental anguish that Bill Proctor has suffered in the past up to the time of trial;
- (c) The physical impairment that Bill Proctor has incurred in the past up to the time of trial;
- (d) The disfigurement that Bill Proctor has incurred in the past up to the time of trial; and
- (e) The reasonable and necessary medical expenses that Bill Proctor has incurred in the past up to the time of trial.

11.3 From the time of trial of this case, the elements of damages to be separately and individually considered for the purpose of determining the sum of money that will fairly and reasonably compensate Bill Proctor for each element sustained in the future are:

- (a) The physical pain that Bill Proctor will suffer in the future from the time of trial;
- (b) The mental anguish that Bill Proctor will suffer in the future from the time of trial;
- (c) The physical impairment that Bill Proctor will suffer in the future from the time of trial;
- (d) The disfigurement that Bill Proctor will continue to incur in the future from the time of trial; and
- (e) The reasonable and necessary medical expenses that Bill Proctor will incur in the future from the time of trial.

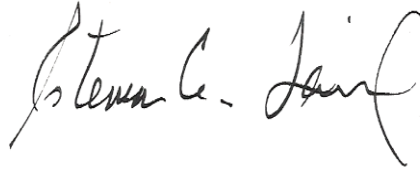
In addition to the above-stated damages, Bill Proctor is also entitled to exemplary damages for the grossly negligent conduct of Jamie Case and Bharathy Sundaram, M.D.

## **XII. PRAYER**

12.1 For these reasons, Plaintiff asks that Defendants be cited to appear and answer, and that upon final trial they have judgment against the Defendants for their actual damages; exemplary

damages, pre-judgment and post-judgment interest; court costs; and for all additional relief to which they may be entitled.

Respectfully submitted,



By:

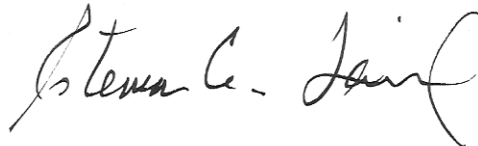
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**ATTORNEYS FOR PLAINTIFF**

CERTIFICATE OF SERVICE

On the 9th day of March 2023, I certify that a true and correct copy of the above and foregoing was served on all counsel of record via efile pursuant to the Texas Rules of Civil Procedure.



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Steven C. Laird

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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