

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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GERMAIN GRAVES,  
1 Fox Run Lane, Apt. 420  
Orchard Park, New York 14127,

Plaintiff,

vs.

**SUMMONS**

Index No.

ERIE COUNTY MEDICAL CENTER CORPORATION  
462 Grider Street  
Buffalo, New York 14215,

YOGESH BAKHAI, M.D.  
462 Grider Street  
Buffalo, New York 14215

MICHAEL T. GUPPENBERGER, M.D.  
462 Grider Street, Suite G-01  
Buffalo, New York 14215

COLLEEN RUSSO, PNP  
462 Grider Street  
Buffalo, New York 14215

KRISTEN HANLEY, LMSW  
462 Grider Street  
Buffalo, New York 14215,

Defendants.

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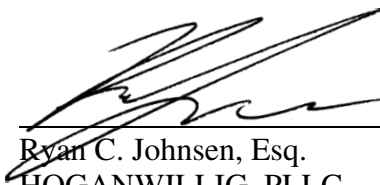
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with a summons, to serve a notice of appearance, on Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service, or within 30 (thirty) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your

failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on the basis of the Plaintiff's residence at 1 Fox Run Lane, Apt. 420, Orchard Park, New York 14127.

DATED: March 25, 2021  
Amherst, New York



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Amherst, New York 14068  
(716) 636-7600

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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GERMAIN GRAVES,

Plaintiff,

**COMPLAINT**

vs.

Index No.

ERIE COUNTY MEDICAL CENTER CORPORATION,  
YOGESH BAKHAI, M.D.,  
MICHAEL T. GUPPENBERGER, M.D.,  
COLLEEN RUSSO, P.N.P., AND  
KRISTEN HANLEY, LMSW,

Defendants.

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Plaintiff Germain Graves, by and through her attorneys, HoganWillig, PLLC, as and for her Complaint against the Defendants, alleges as follows:

**PARTIES**

1. At all times hereinafter mentioned Plaintiff was and still is a resident of the County of Erie, State of New York.

2. Upon information and belief, at all times hereinafter mentioned, Defendant Erie County Medical Center Corporation (“ECMCC”) was and is a corporation organized and existing pursuant to the laws of the State of New York and licensed by the New York State Department of Health to operate a hospital facility known as Erie County Medical Center at 462 Grider Street, City of Buffalo, County of Erie, and State of New York.

3. Upon information and belief, and at all times hereinafter mentioned, Defendant ECMCC, its agents, servants, and/or employees, operated, maintained, managed and was in exclusive control of said hospital, which held itself out as a hospital duly qualified and capable

of rendering care and treatment to the members of the general public, including, but not limited to, Plaintiff, and for such purposes hired doctors, nurses, residents, and other professional personnel and had a duty to properly staff, manage, control and supervise the care and treatment provided to such patients, such as Plaintiff.

4. Upon information and belief, Defendant ECMCC is vicariously liable for the negligent, careless, and reckless actions of its agents, ostensible agents, servants, employees, physicians, residents, nurses, and/or medical personnel.

5. Upon information and belief, Defendant Yogesh D. Bakhai, M.D. was and still is a medical doctor and physician—namely the Chief of Service of Psychiatry at ECMCC—duly licensed to practice his profession in the State of New York with a principal place of business located at 462 Grider Street, Buffalo, New York 14215.

6. Upon information and belief, and at all times hereinafter mentioned, Defendant Yogesh D. Bakhai, M.D. held himself out as duly qualified to render proper and adequate medical care, treatment, and services to members of the general public and those who come under the care of Defendant ECMCC's Psychiatry programs and services, including Plaintiff.

7. Upon information and belief, at all times herein mentioned, Defendant Yogesh D. Bakhai, M.D., in his role as the Chief of Service of Psychiatry, had supervisory authority over all members of Defendant ECMCC's Psychiatry programs, including but not limited to other named Defendants herein.

8. Upon information and belief, at all times herein mentioned, Defendant Yogesh D. Bakhai, M.D. assisted Defendant ECMCC to create, draft and implement written and verbal policies in conjunction with their Psychiatry programs and services, including but not limited to CPEP, with respect to patient care, patient admission, and/or patient discharge.

9. Upon information and belief, at all times herein mentioned, Defendant Yogesh D. Bakhai, M.D. was acting within the scope of his authority, ostensible agency, and/or employment with Defendant ECMCC in creating, drafting, and/or implementing written and verbal policies in the Behavioral Health clinic(s), including but not limited to CPEP, with respect to patient care, patient admission, and/or patient discharge.

10. Upon information and belief, at all times herein mentioned, the aforementioned policies were implemented for members of the general public, including Plaintiff.

11. Upon information and belief, at all times herein mentioned, Defendant ECMCC is vicariously responsible for the negligent, careless and reckless actions of Defendant Yogesh D. Bakhai, M.D.

12. Upon information and belief, Defendant Michael T. Guppenberger, M.D. was and still is a medical doctor and physician duly licensed to practice his profession in the State of New York with a principal place of business located at 462 Grider Street, Buffalo, New York 14215.

13. Upon information and belief, and at all times hereinafter mentioned, Defendant Michael T. Guppenberger, M.D. held himself out as duly qualified to render proper and adequate medical care, treatment, and services to members of the general public, including Plaintiff.

14. Upon information and belief, at all times herein mentioned, Defendant Michael T. Guppenberger, M.D. was acting within the scope of his authority, ostensible agency, and/or employment with Defendant ECMCC in rendering medical care, treatment or services to Plaintiff.

15. Upon information and belief, at all times herein mentioned, Defendant ECMCC is vicariously responsible for the negligent, careless and reckless actions of Defendant Michael T. Guppenberger, M.D.

16. Upon information and belief, Defendant Colleen Russo, N.P. was and still is a nurse practitioner duly licensed to practice her profession in the State of New York with a principal place of business located at 462 Grider Street, Buffalo, New York 14215.

17. Upon information and belief, and at all times hereinafter mentioned, Defendant Colleen Russo, N.P. held herself out as duly qualified to render proper and adequate medical care, treatment, and services to members of the general public, including Plaintiff.

18. Upon information and belief, at all times herein mentioned, Defendant Colleen Russo, N.P. was acting within the scope of her authority, ostensible agency, and/or employment with Defendant ECMCC in rendering medical care, treatment or services to Plaintiff.

19. Upon information and belief, at all times herein mentioned, Defendant ECMCC is vicariously responsible for the negligent, careless and reckless actions of Defendant Colleen Russo, N.P.

20. Upon information and belief, Defendant Kristen Hanley, LMSW was and still is a social worker duly licensed to practice her profession in the State of New York with a principal place of business located at 462 Grider Street, Buffalo, New York 14215.

21. Upon information and belief, and at all times hereinafter mentioned, Defendant Kristen Hanley, LMSW held herself out as duly qualified to render proper and adequate care, treatment, and services to members of the general public, including Plaintiff.

22. Upon information and belief, at all times herein mentioned, Defendant Kristen Hanley, LMSW was acting within the scope of her authority, ostensible agency, and/or employment with Defendant ECMCC in rendering medical care, treatment or services to Plaintiff.

23. Upon information and belief, at all times herein mentioned, Defendant ECMCC is vicariously responsible for the negligent, careless and reckless actions of Defendant Kristen Hanley, LMSW.

24. At all times hereinafter mentioned, each of the Defendants, individually and by their agents, ostensible agents, servants and employees, represented themselves as competent physicians and/or health care providers, with sufficient knowledge, skill and expertise as such physicians and/or health care providers and in their specialties to treat patients, including Kristian T. Woods, in accordance with good and accepted standards.

### **MEDICAL HISTORY**

25. On or about March 6, 2020, Plaintiff, an individual with a long history of psychiatric disease and multiple prior suicide attempts, presented to Defendant ECMCC after a suicide attempt.

26. Upon presentation to Defendant ECMCC, on or about March 6, 2020, Plaintiff was transferred to the Comprehensive Psychiatric Emergency program (“CPEP”) and subsequently came under the care of the named Defendants listed above.

27. Plaintiff was under the care and treatment of Defendants, their agents, servants, employees, physicians, residents, nurses and/or medical staff at and/or of Defendants from March 6, 2020 through March 16, 2020.

28. During the period of March 6, 2020 through March 16, 2020, Plaintiff advised Defendants that she did not want to leave CPEP.

29. On or about March 16, 2020, however, it was determined by Defendants that Plaintiff—despite having a long history of psychiatric disease and multiple prior suicide attempts—did not exhibit any further risk of suicidality and was discharged home.

30. On or about March 18, 2020, only two (2) days after her discharge, Plaintiff engaged in another suicide attempt—causing here to, amongst other things, sustain fractures to her legs, ankles, feet, pelvis, and lower back.

**PROCEDURAL HISTORY**

31. On or about June 11, 2020, Plaintiff served a Notice of Claim upon Erie County Medical Center Corporation in compliance with the New York State General Municipal Law.

32. That on or about January 22, 2021, Plaintiff presented for a 50-h examination.

33. That more than thirty days have passed since Plaintiff served a Notice of Claim and the 50-h hearing has been completed and Defendant ECMCC has failed and refused to adjust Plaintiff's claim.

34. By virtue of the application of one or more sections of Article 16, Section 2 of the Civil Practice Law and Rules, the limitations on liability imposed in that Article do not apply to the causes of action contained herein.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
DEFENDANT BAKHAI**

35. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "34" above as if fully set forth herein.

36. At all times hereinafter mentioned, Defendant Bakhai represented himself as a competent physician, with sufficient knowledge, skill and expertise as a doctor to supervise Defendant ECMCC and CPEP staff, including all named Defendants herein, and treat patients, including Plaintiff, in accordance with good and accepted standards.

37. During said time, by way of supervisory authority, the relationship of physician and patient existed between Plaintiff and Defendant Bakhai, and such relationship was one of trust and confidence on the part of Plaintiff directed toward Defendant Bakhai and his



subordinate staff.

38. During said time, Defendant Bakhai, upon information and belief, assisted with, created, drafted and implemented written and verbal policies in conjunction with ECMCC Psychiatry programs and services, including but not limited to CPEP, with respect to patient care, patient admission, and/or patient discharge.

39. During said time, Defendant Bakhai did not use reasonable care and failed to meet good and accepted standards of practice in the medical community in supervising his subordinate staff, treating and recommending treatment to Plaintiff.

40. During said time, Defendant Bakhai did not use reasonable care and failed to meet good and accepted standards of practice in the medical community by assisting, creating, drafting and implementing written and verbal policies in conjunction with ECMCC Psychiatry programs and services, including but not limited to CPEP, with respect to Plaintiff's discharge.

41. Defendant Bakhai was negligent and committed acts of malpractice in failing to supervise his subordinate staff, creating, drafting, and/or implementing improper policies for patient discharge, failing to employ the skill, care and diligence commonly and ordinarily possessed and required by physicians in the locality where Defendant Bakhai practices by the improper discharge of Plaintiff; and in otherwise being negligent, careless and reckless in connection with the care and treatment rendered to Plaintiff.

42. As a direct result of the carelessness, negligence and lack of skill of Defendant Bakhai in treating and caring for Plaintiff, and without any fault or negligence of Plaintiff contributing thereto, Plaintiff suffered debilitating and painful injuries, all to Plaintiff's damage, including but not limited to past pain, suffering, disability; past expenses for medical treatment; past loss of enjoyment of life; and other damages to be shown at the trial of this matter in an

amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
DEFENDANT GUPPENBERGER**

43. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs “1” through “42” above as if fully set forth herein.

44. At all times hereinafter mentioned, Defendant Guppenberger represented himself as a competent physician, with sufficient knowledge, skill and expertise as a doctor to treat patients, including Plaintiff, in accordance with good and accepted standards.

45. During said time, the relationship of physician and patient existed between Plaintiff and Defendant Guppenberger, and such relationship was one of trust and confidence on the part of Plaintiff directed toward Defendant Guppenberger.

46. During said time, Defendant Guppenberger did not use reasonable care and failed to meet good and accepted standards of practice in the medical community in treating and recommending treatment to Plaintiff.

47. Defendant Guppenberger was negligent and committed acts of malpractice in failing employ the skill, care and diligence commonly and ordinarily possessed and required by physicians in the locality where Defendant Guppenberger practices by the improper discharge of Plaintiff; and in otherwise being negligent, careless and reckless in connection with the care and treatment rendered to Plaintiff.

48. As a direct result of the carelessness, negligence and lack of skill of Defendant Guppenberger in treating and caring for Plaintiff, and without any fault or negligence of Plaintiff contributing thereto, Plaintiff suffered debilitating and painful injuries, all to Plaintiff’s damage, including but not limited to past pain, suffering, disability; past expenses for medical treatment;

past loss of enjoyment of life; and other damages to be shown at the trial of this matter in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST**  
**DEFENDANT RUSSO**

49. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "48" above as if fully set forth herein.

50. At all times hereinafter mentioned, Defendant Russo represented herself as a competent nurse practitioner, with sufficient knowledge, skill and expertise as a nurse practitioner to treat patients, including Plaintiff, in accordance with good and accepted standards.

51. During said time, the relationship of nurse practitioner and patient existed between Plaintiff and Defendant Russo, and such relationship was one of trust and confidence on the part of Plaintiff directed toward Defendant Russo.

52. During said time, Defendant Russo did not use reasonable care and failed to meet good and accepted standards of practice in the medical community in treating and recommending treatment to Plaintiff.

53. Defendant Russo was negligent and committed acts of malpractice in failing to employ the skill, care and diligence commonly and ordinarily possessed and required by nurse practitioners in the locality where Defendant Russo practices by the improper discharge of Plaintiff; and in otherwise being negligent, careless and reckless in connection with the care and treatment rendered to Plaintiff.

54. As a direct result of the carelessness, negligence and lack of skill of Defendant Russo in treating and caring for Plaintiff, and without any fault or negligence of Plaintiff contributing thereto, Plaintiff suffered debilitating and painful injuries, all to Plaintiff's damage,

including but not limited to past pain, suffering, disability; past expenses for medical treatment; past loss of enjoyment of life; and other damages to be shown at the trial of this matter in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST  
DEFENDANT HANLEY**

55. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs “1” through “54” above as if fully set forth herein.

56. At all times hereinafter mentioned, Defendant Hanley represented herself as a competent licensed social worker, with sufficient knowledge, skill and expertise as a licensed social worker to treat patients, including Plaintiff, in accordance with good and accepted standards.

57. During said time, the relationship of licensed social worker and patient existed between Plaintiff and Defendant Hanley, and such relationship was one of trust and confidence on the part of Plaintiff directed toward Defendant Hanley.

58. During said time, Defendant Hanley did not use reasonable care and failed to meet good and accepted standards of practice in the medical community in treating and recommending treatment to Plaintiff.

59. Defendant Hanley was negligent and committed acts of malpractice in failing to employ the skill, care and diligence commonly and ordinarily possessed and required by nurse practitioners in the locality where Defendant Hanley practices by the improper discharge of Plaintiff; and in otherwise being negligent, careless and reckless in connection with the care and treatment rendered to Plaintiff.

60. As a direct result of the carelessness, negligence and lack of skill of Defendant

Hanley in treating and caring for Plaintiff, and without any fault or negligence of Plaintiff contributing thereto, Plaintiff suffered debilitating and painful injuries, all to Plaintiff's damage, including but not limited to past pain, suffering, disability; past expenses for medical treatment; past loss of enjoyment of life; and other damages to be shown at the trial of this matter in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST  
DEFENDANT ERIE COUNTY MEDICAL CENTER CORPORATION**

61. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "60" above as if fully set forth herein.

62. On or about March 6, 2020 through March 16, 2020, Plaintiff engaged Defendant ECMCC to treat her professionally and provide appropriate care and treatment to her.

63. Defendant ECMCC, through its agents, ostensible agents, servants, and/or employees, undertook the responsibility of rendering professional services to Plaintiff for treatment of certain medical and mental health issues.

64. Defendant Bakhai was working within the scope of his employment with Defendant ECMCC, at all times during his course of treatment of Plaintiff, and Defendant ECMCC is vicariously liable for the acts and omissions of Defendant Bakhai.

65. Defendant Guppenberger was working within the scope of his employment with Defendant ECMCC, at all times during his course of treatment of Plaintiff, and Defendant ECMCC is vicariously liable for the acts and omissions of Defendant Guppenberger.

66. Defendant Russo was working within the scope of her employment with Defendant ECMCC, at all times during her course of treatment of Plaintiff, and Defendant ECMCC is vicariously liable for the acts and omissions of Defendant Russo.

67. Defendant Hanley was working within the scope of her employment with Defendant ECMCC, at all times during her course of treatment of Plaintiff, and Defendant ECMCC is vicariously liable for the acts and omissions of Defendant Hanley.

68. Defendant ECMCC, through its agents, servants, employees, physicians, residents, nurses and/or medical staff, in undertaking the medical and surgical care and treatment of Plaintiff, was negligent and committed acts of malpractice in failing to ensure sufficient care and supervision while in CPEP; failing to properly diagnose and treat Plaintiff; failing to seek appropriate medical specialists for Plaintiff's condition; failing to properly evaluate Plaintiff's condition; failing to treat Plaintiff in accordance with accepted medical customs and practices; failing to properly monitor Plaintiff's condition subsequent to initial treatment; causing, permitting and allowing the medical condition of Plaintiff to deteriorate, become aggravated and progressively worsen; failing to recognize and heed Plaintiff's objective and subjective signs, symptoms and complaints; failing to treat Plaintiff in accordance with that degree of skill and care required under the circumstances then and there existing; failing to give proper care; and in otherwise being negligent, careless and reckless in connection with the care and treatment rendered to Plaintiff.

69. As a direct result of the carelessness, negligence and lack of skill of Defendant ECMCC, through its agents, ostensible agents, servants, and/or employees, in treating and caring for Plaintiff, and without any fault or negligence of Plaintiff contributing thereto, Plaintiff suffered debilitating and painful injuries, all to Plaintiff's damage in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST  
DEFENDANT ERIE COUNTY MEDICAL CENTER CORPORATION**

70. Plaintiffs repeat, reiterate, and re-allege each and every allegation contained in paragraphs “1” through “69” above as if more fully set forth herein.

71. Upon information and belief, Defendant ECMCC, their agents, servants, and employees, hired, trained and/or supervised Defendants Bakhai, Guppenberger, Hanley and Russo.

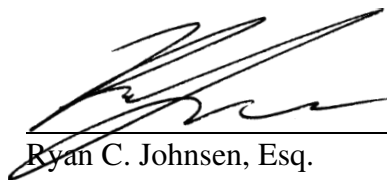
72. Defendant ECMCC was negligent in their hiring, training and/or supervisions of Defendants Bakhai, Guppenberger, Hanley and Russo in that, despite representations to the contrary, it knew, or in the exercise of reasonable care should have known, that said agents, servants, and/or employees did not possess the knowledge or skills to render assistance to Plaintiff in a timely manner.

73. Defendant ECMCC was negligent in their hiring, training and/or supervisions of Defendants Bakhai, Guppenberger, Hanley and Russo in that, despite representations to the contrary, it knew, or in the exercise of reasonable care should have known, that the medical assistance provided to Plaintiff by Defendants Bakhai, Guppenberger, Hanley and Russo was rendered in an untimely and/or wrongful, negligent, and careless manner.

74. By reason of the foregoing, Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**WHEREFORE**, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and requests the costs and disbursements and such other and further relief as to the Court may seem just and proper.

DATED: March 25, 2021  
Amherst, New York



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