

NEW YORK STATE
SUPREME COURT

COUNTY OF JEFFERSON

H.V.,

Plaintiff,

-against-

SUMMONS

Index No.:

SAMARITAN MEDICAL CENTER
830 Washington Street, Watertown, New York 13624,

Plaintiff designates
Jefferson County as the
place of trial based upon
the residence of a
defendant.

and

JOHN W. JEPMA, D.O.,
4433 Doris Drive, New Smyrna Beach, Florida 32168,

Defendants.

To the above named Defendant(s):

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 this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within Twenty (20) days after the service of this summons, exclusive of the day of service (or within Thirty 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: April 10, 2019

BOTTAR LAW, PLLC



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NEW YORK STATE
SUPREME COURT COUNTY OF JEFFERSON

H.V.,

Plaintiff,

COMPLAINT

-against-

Index No.:

SAMARITAN MEDICAL CENTER and JOHN W.
JEPMA, D.O.,

Defendants.

The plaintiff, H.V.¹, by and through her attorneys, Bottar Law, PLLC, and Carlisle Law Firm, P.C., complaining of the defendants, alleges as follows:

1. At all relevant times, she resided in Clayton, New York, in the County of Jefferson and State of New York.

2. Upon information and belief, at all times relevant to this complaint, the defendant, SAMARITAN MEDICAL CENTER ("Samaritan), was and is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York, with a principal place of business and 294-bed hospital facility located at 830 Washington Street, Watertown, New York.

3. Upon information and belief, at all times relevant to this complaint, Samaritan owned, operated, managed, maintained, staffed and supervised a number of specialty clinics and centers, including the Samaritan Family Health Center located at 909 Strawberry Lane, Clayton, New York.

¹ Pursuant to E.K. v New York Hospital-Cornell Medical Center, 600 N.Y.S.2d 993 (Sup Ct., Orange Cty., June 4, 1992), this action is filed under a pseudonym. Defendants have been provided the identity of the Plaintiff.

4. Upon information and belief, and at all times relevant to this complaint and specifically from April 9, 2012 through and including May 16, 2016, the plaintiff was a patient of Samaritan, thereby creating a healthcare provider-patient relationship.

5. Upon information and belief, and at all times hereinafter mentioned, Samaritan held itself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff that it was knowledgeable, qualified and competent to treat her condition and symptoms.

6. Upon information and belief, and at all times relevant to this complaint, the defendant, JOHN W. JEPMA, D.O. ("Jepma"), was a physician duly licensed to practice medicine in the State of New York, with a principal place of business located at 909 Strawberry Lane, Clayton, New York.

7. Upon information and belief, on or about August 1, 2018, Jepma purchased a home in Florida located at 4433 Doris Drive, New Smyrna Beach, and currently resides at that address.

8. Upon information and belief, and at all times relevant to this complaint and specifically from April 9, 2012 through and including May 16, 2016, the plaintiff was a patient of Jepma, thereby creating a physician-patient relationship.

9. Upon information and belief, and at all times hereinafter mentioned, Jepma held himself out to be skilled in the treatment of various illnesses and conditions and, in particular, represented to the plaintiff that he was knowledgeable, qualified and competent to treat her condition and symptoms.

10. Upon information and belief, at all times relevant, Jepma was an employee of Samaritan.

11. Upon information and belief, at all times relevant, Jepma was acting within the scope of and pursuant to his duties as an officer, agent and/or employee of Samaritan and, therefore, Samaritan is vicariously liability for his acts of omission and/or commission.

12. Upon information and belief, in 2013 Jepma initiated a sexual relationship with the plaintiff, which included intercourse with her during unchaperoned office visits that occurred at the Samaritan Family Health Center.

13. According to the New York State Department of Health, “[a] patient cannot give meaningful consent to sexual contact due to the position of trust and disparity of power in the physician-patient relationship.”

14. New York State Penal Law section 130.05 provides that a sexual act is committed without consent where, as here, the victim was a patient of a health care provider and the act occurred during a treatment session, consultation, interview or examination.

15. Upon information and belief, Jepma’s sexual relationship with the plaintiff continued through 2016.

16. Upon information, during the period of time that Jepma maintained a sexual relationship with the plaintiff, he also maintained a sexual relationship with other female patients.

17. Upon information and belief, Samaritan knew or should have known about Jepma’s sexual relationship with patients, including the plaintiff.

18. Upon information and belief, the amounts in controversy exceed the jurisdictional limitations of all lower courts.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER
(Negligence)**

19. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

20. Upon information and belief, from April 9, 2012 through and including May 16, 2016, the plaintiff was a patient of Samaritan.

21. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan owed the plaintiff a duty of care and was negligent in the discharge of its duty.

22. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

23. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

24. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

25. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

26. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

27. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

28. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER
(Negligent Hiring and Credentialing)**

29. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

30. Upon information and belief, Samaritan hired and credentialed Jepma.

31. Upon information and belief, Samaritan had a duty to perform a thorough and rigorous hiring and credentialing process for all employees, including Jepma.

32. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan breached its duty by either failing to have in place a rigorous hiring and credentialing process for its employees, including Jepma, or by failing to follow the hiring credentialing process that was in place.

33. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

34. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

35. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

36. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

37. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

38. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

39. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER
(Negligent Supervision)**

40. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

41. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan had a duty to supervise the conduct of its employees, including Jepma.

42. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan breached its duty by failing to supervise its employees, including Jepma.

43. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

44. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

45. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

46. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

47. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

48. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

49. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

**AS AND FOR PLAINTIFF'S FOURTH CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER
(Negligent Retention)**

50. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

51. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan had a duty to terminate its employment relationship with Jepma once it knew, or should have known, that he was engaging in sexual relationships with staff and patients.

52. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan was negligent by retaining Jepma in its employ.

53. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

54. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

55. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

56. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

57. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

58. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

59. Upon information and belief, as a direct and proximate result of Samaritan's negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

**AS AND FOR PLAINTIFF'S FIFTH CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER and JOHN W. JEPMA, D.O.
(Negligence Per Se)**

60. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

61. New York State Education Law section 6530(9) provides that it is professional misconduct to commit an act constituting a crime under New York State law.

62. New York State Education Law section 6530(20) provides that it is professional misconduct to practice medicine in a way that evidences moral unfitness.

63. New York State Education Law section 6530(31) provides that it is professional misconduct to willfully harass, abuse or intimidate a patient physically or verbally.

64. New York State Education Law section 6530(32) provides that it is professional misconduct to fail to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

65. New York State Education Law section 6530(47) provides it is professional misconduct to fail to use scientifically accepted barrier precautions and infection control practices as established by the Department of Health.

66. 10 N.Y.C.R.R. section 405.7(b)(3) provides that a hospital shall afford to each patient the right to considerate and respectful care in a clean and safe environment.

67. Upon information and belief, from April 9, 2012 through and including May 16, 2016, Samaritan and Jepma violated, *inter alia*, New York State Education Law sections 6530(9), 6530(20), 6530(31), 6530(32), and 6530(47), 10 N.Y.C.R.R. section 405.7(b)(3), as well as New York State Penal Law section 130.05.

68. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

69. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

70. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

71. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

72. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

73. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

74. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

**AS AND FOR PLAINTIFF'S SIXTH CAUSE OF ACTION
AGAINST SAMARITAN MEDICAL CENTER and JOHN W. JEPMA, D.O.
(Medical Malpractice)**

75. Plaintiff repeats and realleges each and every allegation of the complaint as if set forth in full here.

76. Upon information and belief, from April 9, 2012 through and including May 16, 2016, the plaintiff received negligent medical care and treatment from Samaritan and Jepma.

77. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff sustained severe and permanent injuries.

78. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff experienced pain and suffering, mental anguish, and diminished quality of life.

79. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the will experience pain and suffering, mental anguish, and diminished quality of life.

80. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff incurred medical expenses.

81. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff will incur medical expenses.

82. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff lost wages, income, support and benefits.

83. Upon information and belief, as a direct and proximate result of the defendants' negligence, carelessness and recklessness, the plaintiff will lose wages, income, support and benefits.

WHEREFORE, the plaintiff hereby demands judgment against the defendants and each of them jointly, severally and in concert in a fair and reasonable amount as may be awarded by a jury, plus punitive damages, together with such other and further relief as the Court may deem just and proper, including the costs and disbursements of this action.

Dated: April 10, 2019

BOTTAR LAW, PLLC



By: Michael A. Bottar, Esq.

Attorney for Plaintiff

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NEW YORK STATE
SUPREME COURT

COUNTY OF JEFFERSON

H.V.,

Plaintiff,

-against-

**CERTIFICATE OF MERIT
PURSUANT TO CPLR
SECTION 3012-A**

SAMARITAN MEDICAL CENTER and JOHN W.
JEPMA, D.O.,

Index No.:

Defendants.

MICHAEL A. BOTTAR, an attorney duly admitted to practice law before the Courts of the State of New York does hereby affirm the following to be true under the penalties of perjury:

I am the attorney for the Plaintiff in this action. I have reviewed the facts of the case and have consulted with at least one physician licensed to practice medicine, and who I reasonably believe is knowledgeable in the relevant issues involved in this action. I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action.



MICHAEL A. BOTTAR, ESQ.