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Return To:
JEFF D. DEFRANCISCO
6739 Myers Road
East Syracuse, NY 13057

Guthrie Medical Group, P.C.
Harewood, Peter Fabian M.D.
Gynecologic Oncology Associates, P.C.
Dubeshter, Brent M.D.

Bess, Donald

State Fee Index Number	\$165.00	
County Fee Index Number	\$26.00	
State Fee Cultural Education	\$14.25	
State Fee Records Management	\$4.75	Employee: JM
Total Fees Paid:	\$210.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



**SUPREME COURT
STATE OF NEW YORK MONROE COUNTY**

**DONALD BESS, Individually and
as Administrator of the Estate of
LAURA BESS,**

Plaintiffs,

SUMMONS

-vs-

Index No.:

**GUTHRIE MEDICAL GROUP, P.C.,
PETER FABIAN HAREWOOD, M.D.,
GYNECOLOGIC ONCOLOGY ASSOCIATES, P.C. and
BRENT DUBESHTER, M.D.,**

Defendants.

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 this summons, to serve a Notice of Appearance, on the Plaintiffs' Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 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 herein.

Plaintiffs designate Monroe County as the place of trial.

The basis of the venue is Defendant Gynecologic Oncology Associates place of business.

Dated: November 2, 2018

Jeff D. DeFrancisco, Esq.
DeFrancisco & Falgiatano, LLP
Attorneys for Plaintiffs
6739 Myers Road
East Syracuse, New York 13057
(315) 479-9000

**SUPREME COURT
STATE OF NEW YORK MONROE COUNTY**

**DONALD BESS, Individually and
as Administrator of the Estate of
LAURA BESS,**

COMPLAINT

Plaintiffs,

-vs-

Index No.:

**GUTHRIE MEDICAL GROUP, P.C.,
PETER FABIAN HAREWOOD, M.D.,
GYNECOLOGIC ONCOLOGY ASSOCIATES, P.C. and
BRENT DUBESHTER, M.D.,**

Defendants.

Plaintiffs, Donald Bess, Individually and as Administrator of the Estate of Laura Bess, as and for their Complaint against the above-mentioned Defendants, state as follows:

1. Plaintiffs, at all times mentioned herein, were residents of Steuben County, New York.
2. Decedent, Laura Bess (hereinafter "decedent"), died on May 1, 2018.
3. Plaintiff, Donald Bess, husband of the decedent, was granted Letters of Administration by the Steuben County Surrogate's Court and is hereby authorized to bring this proceeding.
4. Upon information and belief, Defendant Guthrie Medical Group, P.C. (hereinafter "Guthrie") was a foreign professional corporation licensed by the State of New York to manage and/or conduct business as medical practices in the State of New York.
5. Upon information and belief, Defendant Guthrie, at all times mentioned herein, held itself out to Plaintiffs and the general public as medical organizations competently staffed and

qualified to, and capable of, treating the sick and ill and providing medical services for the treatment of symptoms Plaintiff presented with as set forth herein.

6. Upon information and belief, Defendant Guthrie employed physicians, physician assistants, nurse practitioners, registered nurses, nursing assistants, and/or other persons or health care providers including those employees, agents, and/or staff members who provided care and treatment and/or services and/or consultations to decedent at all relevant times herein.

7. Upon information and belief, Defendant Guthrie and its employees, agents and/or staff members, at all times mentioned herein, had a duty and/or obligation to render medical services, care and treatment to decedent, Laura Bess, in accordance with good, usual and customary medical standards and/or practices.

8. Upon information and belief, Defendant Peter Fabian Harewood, M.D. (hereinafter "Harewood"), at all times mentioned herein, was and still is a duly licensed physician authorized to practice medicine in the State of New York, and was and is still practicing medicine in Steuben County, New York.

9. Upon information and belief, at all times mentioned herein, Defendant Harewood held himself out to Plaintiffs and to the general public as a physician having the requisite skill, knowledge and experience to provide medical care in accordance with generally accepted medical standards, including the medical care provided to decedent as set forth herein.

10. Upon information and belief, at all times mentioned herein, Defendant Harewood had a duty and/or obligation to render medical services, care and treatment to Plaintiffs in accordance with good, usual and customary medical standards and practice.

11. Upon information and belief, Defendant Harewood, at all times mentioned herein, was and still is an employee and/or agent and/or staff member of Defendant Guthrie.

12. Upon information and belief, Defendant Gynecologic Oncology Associates, P.C. (hereinafter “Associates”), was and still is a medical practice duly authorized and licensed by the State of New York to do business as same in the State of New York.

13. Upon information and belief, Defendant Associates, at all times mentioned herein, held itself out to Plaintiffs and the general public as a medical practice competently staffed and qualified to, and capable of, treating the sick and ill and providing medical services for the treatment of symptoms decedent as set forth herein.

14. Upon information and belief, Defendant Associates employed physicians, physician assistants, nurse practitioners, registered nurses, nursing assistants, and/or other persons or health care providers including those employees, agents, and/or staff members who provided care and treatment and/or services and/or consultations to decedent at all relevant times herein.

15. Upon information and belief, Defendant Associates and its employees, agents and/or staff members, at all times mentioned herein, had a duty and/or obligation to render medical services, care and treatment to decedent, Laura Bess, in accordance with good, usual and customary medical standards and/or practices.

16. Upon information and belief, Defendant Brett Dubeshter, M.D. (hereinafter “Dubeshter”), at all times mentioned herein, was and still is a duly licensed physician authorized to practice medicine in the State of New York, and was and is still practicing medicine in Monroe County, New York.

17. Upon information and belief, at all times mentioned herein, Defendant Dubeshter held himself out to Plaintiffs and to the general public as a physician having the requisite skill, knowledge and experience to provide medical care in accordance with generally accepted medical standards, including the medical care provided to decedent as set forth herein.

18. Upon information and belief, at all times mentioned herein, Defendant Dubeshter had a duty and/or obligation to render medical services, care and treatment to Plaintiffs in accordance with good, usual and customary medical standards and practice.

19. Upon information and belief, Defendant Dubeshter, at all times mentioned herein, was and still is an employee and/or agent and/or staff member and/or maintained ownership interest in Defendant Associates.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS GUTHRIE AND HAREWOOD

20. Plaintiffs repeat and reallege each of the allegations in this complaint as if fully set forth herein.

21. Upon information and belief, on or about November 9, 2015, decedent was seen by Defendant Harewood for complaints of spotting and was placed on Micronor and an ultrasound was ordered to determine the etiology of the bleeding.

22. Upon information and belief, on or about December 7, 2015, decedent was seen by Defendant Harewood for a follow-up visit and to review the results of the ultrasound.

23. Upon information and belief, decedent was complaining of pain and the mass had increased in size over the past few weeks.

24. Upon information and belief, the appearance of the left ovary was abnormal with multiloculated cystic and solid lesions.

25. Upon information and belief, the impression was that the mass was likely representative of a dermoid or teratoma, however, there was still a concern regarding a potential malignancy.

26. Upon information and belief, on or about December 8, 2015, decedent's lab results

revealed elevated CA-125 which was concerning for ovarian cancer and/or other types of cancer.

27. Upon information and belief, on or about December 31, 2015, decedent was seen by Defendant Harewood for pre-op in anticipation of a laparoscopic diagnostic procedure scheduled for January 5, 2016.

28. Upon information and belief, on or about January 5, 2016, decedent underwent a diagnostic laparoscopy and LSO for ovarian cyst which was performed by Defendant Harewood.

29. Upon information and belief, during the laparoscopic procedure, Defendant Harewood removed the large ovarian cyst, left fallopian tube and left ovary from decedent

30. Upon information and belief, during the procedure, despite the potential for malignancy, Defendant Harewood decompressed the contents of the ovarian cyst into decedent's uterus and/or abdomen.

31. Upon information and belief, due to the size of the cyst and the potential for malignancy, the procedure to remove same should have been performed via an open procedure and the cyst should not have been drained into the abdomen.

32. Upon information and belief, pathology from the aforesaid procedure revealed the contents of the ovarian cyst to be cancerous.

33. Upon information and belief, based on the pathology results, prior to, and up to the performance of the laparoscopic procedure, the cancer was limited to the left ovary.

34. Upon information and belief, based on the aforesaid pathology that the cancer had not spread, Defendant Harewood and Guthrie's act of draining the cyst into the abdomen caused the cancerous contents to spread.

35. Upon information and belief, Defendants Harewood and Guthrie thereafter failed to provide appropriate follow-up care and treatment.

36. Upon information and belief, the negligence, professional negligence and malpractice of Defendants Guthrie and Harewood, their employees, agents and/or staff members and/or those under their supervision and/or control and/or the manner in which said Defendants were careless, negligent, and/or committed acts and/or omission and/or deviated and/or departed from accepted customs and/or standards with regard to the care and treatment provided to decedent, Laura Bess, includes, but is not limited to: failing to properly supervise their employees, agents and/or staff members; failing to have adequate policies and/or procedures in place to prevent the injury sustained by decedent; negligent performance of the January 2016 procedure; negligently failing to refer decedent to a Gyn Oncologist to perform the removal of the cyst, fallopian tube and ovary; negligently performing the January 2016 procedure laparoscopically; negligently failing to perform an open procedure for the removal of the cyst, fallopian tube and ovary; negligently failing to drain the cancerous contents of cyst into a bag; negligently draining the contents of the cancerous cyst into decedent's abdomen; negligently causing decedent's cancer to spread into areas that had been previously without cancer; negligently failing to refer decedent to an oncologist; failing to order an MRI before the January 2016 procedure; failing to order an MRI or CT following the January 2016 procedure; failing to provide appropriate follow-up to decedent; failing to monitor decedent's condition; and failing to timely diagnose a change in the decedent's condition; among other deviations from generally accepted medical standards.

37. Upon information and belief, the aforesaid acts and/or omissions of Defendants Guthrie and Harewood constitute negligence, professional negligence and medical malpractice by said Defendants without any culpable conduct on the part of Plaintiffs contributing thereto.

38. Solely as a result of the aforesaid negligence, professional negligence and medical malpractice by said Defendants without any culpable conduct of the Plaintiffs, the Plaintiffs suffered

the following damages as more fully set forth in this complaint.

39. As a result of the foregoing, Plaintiffs seek damages that exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction over the Defendants herein.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS DUBESHTER AND ASSOCIATES

40. Plaintiffs repeat and reallege each of the allegations in this complaint as if fully set forth herein.

41. Upon information and belief, on or about March 31, 2016, Defendant Dubeshter performed a robotic hysterectomy with right salpingo-oophorectomy and omental biopsy with robotic appendectomy on decedent for borderline mucinous carcinoma.

42. Upon information and belief, during the procedure, Defendant Dubeshter failed to perform a peritoneal washing to determine the staging of decedent's cancer and if the cancer had spread.

43. Upon information and belief, Defendant Dubeshter failed to order an MRI or CT prior to and following the March 31, 2016 procedure.

44. Upon information and belief, following the March 31, 2016 procedure, Defendant Dubeshter only saw decedent for one post-op visit on April 12, 2016 and did not follow-up with decedent again for over a year.

45. Upon information and belief, following the March 31, 2016 procedure, Defendant Dubeshter did not refer decedent to a medical oncologist for subsequent therapy.

46. Upon information and belief, Defendant Dubeshter did nothing from April, 2016 through June 2017 to monitor the decedent's condition and confirm the cancer had gone.

47. Upon information and belief, Defendant Dubeshter knew or should have known that

Defendant Harewood drained cancerous contents into the decedent's abdomen, that a peritoneal washing was necessary, and that the decedent required follow-up care and monitoring because of it.

48. Upon information and belief, on or about June 7, 2017, decedent presented to Defendant Dubeshter with complaints of abdominal pain.

49. Upon information and belief, a CT scan performed prior to the June 7, 2017 appointment had revealed infiltrate changes in residual omentum and ascites.

50. Upon information and belief, on or about June 26, 2017, decedent underwent a secondary cytoreduction with infracolic omentectomy, peritoneal biopsies and colorrhaphy performed by Defendant Dubeshter.

51. Upon information and belief, exploration of the abdomen revealed tumor infiltration of the omentum and stippling of the peritoneal surfaces and pathology results revealed metastatic moderately differentiated mucinous adenocarcinoma.

52. Upon information and belief, the negligence, professional negligence and malpractice of Defendants Debeshter and Associates, their employees, agents and/or staff members and/or those under their supervision and/or control and/or the manner in which said Defendants were careless, negligent, and/or committed acts and/or omission and/or deviated and/or departed from accepted customs and/or standards with regard to the care and treatment provided to decedent, Laura Bess, includes, but is not limited to: failing to properly supervise their employees, agents and/or staff members; failing to have adequate policies and/or procedures in place to prevent the injury sustained by decedent; negligently failing to perform a peritoneal washing during the March 31, 2016 procedure; negligently failing to timely refer decedent to a medical oncologist following the March 31, 2016 procedure; failing to order an MRI or CT before the March 31, 2016 procedure; failing to timely order an MRI or CT following the March 31, 2016 procedure; negligently failing to provide

sufficient follow-up to decedent following the March 31, 2016 procedure; failing to timely monitor decedent's condition following the March 31, 2016 procedure; negligently failing to more timely diagnose the decedent with cancer; and negligently allowing more than a year to pass without providing follow-up care to decedent; among other deviations from generally accepted medical standards.

53. The aforesaid acts and/or omissions of Defendants Dubeshter and Associates constitute negligence, professional negligence and medical malpractice by said Defendants without any culpable conduct on the part of Plaintiffs contributing thereto.

54. Solely as a result of the aforesaid negligence, professional negligence and medical malpractice by said Defendants without any culpable conduct of the Plaintiffs, the Plaintiffs suffered the following damages as more fully set forth in this complaint.

55. As a result of the foregoing, Plaintiffs seek damages that exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction over the Defendants herein.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS

56. Plaintiffs repeat and reallege each of the allegations in this complaint as if fully set forth herein.

57. Upon information and belief, Defendants, their employees, agents, apparent agents, independent contractors, and/or staff members, failed to properly and adequately explain and disclose to Plaintiffs the nature, effects, consequences, complications, risks, and alternative procedures and treatment to the course of care and treatment undertaken by the Defendants.

58. Upon information and belief, a reasonably prudent person in Plaintiffs' position

would not have undergone the course of treatment conducted by Defendants and would have undergone other and/or alternative treatment conducted by Defendants if they had been fully informed of the nature, effects, consequences, complication and risks of the proposed treatment or non-treatment by Defendants.

59. By reason of the foregoing, Defendants failed to obtain Plaintiffs consent and/or informed consent prior to the institution of the course of treatment conducted by Defendants.

60. Upon information and belief, the aforesaid failure to obtain an informed consent constitutes negligence, professional negligence and malpractice by Defendants without any negligence of Plaintiffs contributing thereto and is a violation of the statues and regulations of the State of New York.

61. Upon information and belief, as a result of the aforesaid failure to obtain Plaintiffs' informed consent as stated above, Plaintiffs suffered the injuries as set forth herein.

62. As a result of the foregoing, Plaintiffs seek damages that exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction over the Defendants herein.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS

63. Plaintiffs repeat and reallege each of the allegations in this complaint as if fully set forth herein.

64. Wholly as a result of the negligence, professional negligence and malpractice of Defendants as stated herein, Plaintiff, Donald Bess, was caused to lose the services, society, companionship and consortium, a loss of household contribution, lost wages, loss of support, has been caused to incur medical bills, and has and will suffer from mental anguish and pain and

suffering due to his wife's death; among other injuries.

65. Wholly as a result of the negligence, professional negligence and malpractice of Defendants as stated herein, the decedent's children have suffered a loss of guidance, mental anguish, and a loss of support of their mother; among other losses.

66. As a result of the foregoing, Plaintiffs seek damages that exceed the jurisdictional limits of all lower courts that would otherwise have jurisdiction over Defendants herein.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS

67. Plaintiffs repeat and reallege each of the allegations as if fully set forth herein.

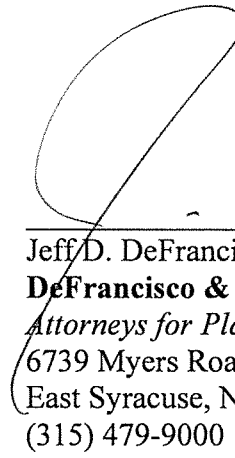
68. As a result of the aforesaid negligence, professional negligence and the malpractice of Defendants, Laura Bess died on May 1, 2018.

69. As a result of the aforesaid negligence of all of the Defendants and said Defendants' failure to obtain Plaintiffs' informed consent as stated above, the decedent was caused to sustain excruciating pain and suffering; mental anguish; the spread of cancer; several hospitalizations; additional surgeries; substantial loss for an opportunity for cure; required palliative care; development of a unresectable tumor; distal ileal bowel obstruction caused by the unresectable tumor; significant medical care; fear of impending death; and premature death; among other injuries.

70. As a result of said wrongful death, the distributees of Laura Bess have suffered pecuniary loss and damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over the Defendants herein.

WHEREFORE, Plaintiffs demand judgment against Defendants for all causes of action for the damages stated herein, in an amount to be determined, together with the costs and disbursements of this action, and such other and further relief this Court deems just and proper.

Dated: November 2, 2018



Jeff D. DeFrancisco, Esq.
DeFrancisco & Falgiatano, LLP
Attorneys for Plaintiffs
6739 Myers Road
East Syracuse, New York 13057
(315) 479-9000

**SUPREME COURT
STATE OF NEW YORK MONROE COUNTY**

**DONALD BESS, Individually and
as Administrator of the Estate of
LAURA BESS,**

Plaintiffs,

CERTIFICATE OF MERIT

-vs-

Index No.:

**GUTHRIE MEDICAL GROUP, P.C.,
PETER FABIAN HAREWOOD, M.D.,
GYNECOLOGIC ONCOLOGY ASSOCIATES, P.C. and
BRENT DUBESHTER, M.D.,**

Defendants.

Pursuant to CPLR §3012-a, JEFF D. DEFRANCISCO, ESQ., hereby states:

I have reviewed the records and facts of the above-entitled case, and have consulted with at least one physician who is licensed to practice medicine. It is my reasonable belief that said physician is knowledgeable in the relevant issues involved in this action, and I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action against the Defendants.

Dated: November 2, 2018

Jeff D. DeFrancisco, Esq.
DeFrancisco & Falgiatano, LLP
Attorneys for Plaintiffs
6739 Myers Road
East Syracuse, New York 13057
(315) 479-9000