

**LOUIS B. HIMMELSTEIN & ASSOCIATES, P.C.**

By: LOUIS B. HIMMELSTEIN, ESQUIRE

Identification Number: 41140

1420 Walnut Street-Suite 1000

Philadelphia, PA 19102

(215) 790-9996 - ATTORNEY FOR PLAINTIFF



**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

TERM, 2018

No.:

CIVIL ACTION-COMPLAINT

Timothy Kersey :  
PO Box 50602, Philadelphia, PA 19132 :  
vs. :  
Belmont Behavioral Health Hospital :  
4200 Monument Rd, Philadelphia PA 19131 :  
and :  
BCCT Over Corp. :  
4200 Monument Rd, Philadelphia PA 19131 :  
and :  
Jamal Smith :  
3126 Haverford Ave, Philadelphia PA 19104 :

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUR WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
Lawyer Referral and Information Service  
One Reading Center  
Philadelphia, Pennsylvania 19107  
(215) 238-633

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE  
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Filadelfia, Pennsylvania 19107  
(215)238-6333

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**CIVIL ACTION-COMPLAINT**

**COMPLAINT**

**COMES NOW**, Plaintiff, **Timothy Kersey**, by and through his counsel, Louis B. Himmelstein & Associates P.C., and claims damages of the Defendants, individually, jointly and/or severally upon causes of action whereof the following is a statement:

1. Plaintiff, **Timothy Kersey**, is an adult individual resident of the City of Philadelphia, Commonwealth of Pennsylvania, residing at the above captioned address, and at all times relevant herein, Plaintiff, **Timothy Kersey**, was caused to sustain serious and permanent orthopedic and neurological injuries when he was attacked, assaulted, and beaten as a result of Defendants' conduct.
2. Defendant, **Belmont Behavioral Health Hospital**, (hereinafter also referred to as Defendant(s)) is either a corporation, partnership and/or hospital entity regularly doing business in the City of Philadelphia, Commonwealth of Pennsylvania, and at all times herein material, Plaintiff, **Timothy Kersey**, was caused to sustain serious and permanent orthopedic and neurological injuries when he was attacked, assaulted, and beaten as a result of Defendants' conduct
3. Defendant, **BCCT Over Corp.**, (hereinafter also referred to as Defendant(s)) is either a corporation, partnership and/or hospital entity regularly doing business in the City of Philadelphia, Commonwealth of Pennsylvania, and at all times herein material, Plaintiff, **Timothy Kersey**, was caused

to sustain serious and permanent orthopedic and neurological injuries when he was attacked, assaulted, and beaten as a result of Defendants' conduct

4. Defendant, **Jamal Smith**, (hereinafter also referred to as Defendant doctor and/or Defendants), is an adult individual, resident and citizen of Philadelphia, Commonwealth of Pennsylvania residing at the above address, and at all times herein material, Defendant violently attacked the Plaintiff.

5. At all times herein material, Defendants were either acting individually and/or on each other's behalf and/or by and through their/its/his/his duly authorized agents, servants, workmen, bailees and/or employees all of whom were acting in the course and scope of their/its/his/his employment and in the furtherance of each of the Defendants' businesses and affairs.

6. On or about July 27<sup>th</sup>, 2016, Defendants **BCCT Over Corp.** and/or **Belmont Behavioral Health Hospital**, either individually, jointly and/or severally, did own, possess, and control actually and for their/its own business, and/or by and through its/their duly authorized agents, doctors, orderlies, servants, workmen and/or employees acting within the scope of their employment and in furtherance of the business of said Defendants, a certain premises known as **Belmont Behavioral Health Hospital**, located at and/or near 4200 Monument Road, Philadelphia PA 19131.

7. On or about July 27<sup>th</sup>, 2016, in the evening hours, Plaintiff, **Timothy Kersey**, was a business invitee and visitor at the premises known as **Belmont Behavioral Health Hospital**, which was under the control of Defendants, **BCCT Over Corp.** and/or **Belmont Behavioral Health Hospital**, when he was caused to be injured due to the intentional and/or careless, reckless and negligent conduct of each of the Defendants, either acting individually and/or by and through their duly authorized agents, servants, workmen, employees and/or bailees who were acting within the course and scope of their authority.

8. At the aforementioned time and place, Defendants individually, jointly and/or severally, by and through their duly authorized agents, servants, workmen, employees, medical staff and/or doctors were treating delusional, mentally ill, dangerous and violent psychiatric patients at the aforesaid premises, including Defendant, **Jamal Smith**.

9. At all times herein material, Defendant, Jamal Smith, who had violent and dangerous propensities, was in the care and custody of co-Defendants, **BCCT Over Corp.** and/or **Belmont Behavioral Health Hospital**.

10. Defendants' employees and/or servants and/or agents carelessly, recklessly and/or negligently allowed Plaintiff to remain in a room with delusional, mentally ill, dangerous and violent psychiatric patient, namely Defendant, **Jamal Smith**, who was left unattended, and without giving any warning to Plaintiff as to the danger he was in.

11. On or about July 27<sup>th</sup>, 2016, Plaintiff, **Timothy Kersey**, a business invitee and patient on Defendants' premises, was placed in the company of a delusional, mentally ill, dangerous and violent psychiatric patient, namely Defendant, **Jamal Smith**, by co-Defendants and/or their agents, servants, workmen, employees, medical staff and/or doctors, and as a result of the careless, reckless, intentional and negligent conduct of Defendants, Plaintiff was caused to be savagely beaten, assaulted and/or attacked by Defendant, **Jamal Smith**, who was left unattended, and as a result of which, Plaintiff sustained serious, painful and permanent injuries.

12. Defendants did not have any employees and/or doctors and/or nurses and/or security guards monitoring the dangerous psychiatric patients in the area where Plaintiff was placed at the time of the accident, which was grossly negligent and extremely dangerous to unsuspecting individuals such as Plaintiff.

13. At the aforementioned time, and for a long time prior thereto, Defendants knew, or in the reasonable exercise of care should have known of the violent propensities of the patient that attacked Plaintiff, but acted in such a grossly negligent fashion that they failed to remove him from the premises wherein Plaintiff was located.

14. At the aforementioned time, Defendants' Nurses and/or doctors and/or employees and/or workers, failed to remove the delusional, mentally ill, dangerous and aforesaid violent psychiatric patient

prior to directing Plaintiff to wait in the room on Defendants' premises, and failed to properly aid and protect the Plaintiff, **Timothy Kersey**, while he was lawfully on their premises.

15. Defendants failed to warn Plaintiff of the dangerous nature of the delusional, mentally ill, dangerous and violent psychiatric patients who were in the room, and further failed to provide employees and or security guards to monitor said patients.

16. At the aforesaid time, Defendant, **Jamal Smith**, committed the following acts against the Plaintiff:

- a) punched the Plaintiff;
- b) beat the Plaintiff;
- c) assaulted the Plaintiff;
- d) unlawfully restrain the Plaintiff;
- e) wantonly, maliciously and/or recklessly placed the Plaintiff in harm's way;
- f) deprived Plaintiff of his rights;
- g) threw Plaintiff to the ground;
- h) otherwise caused Plaintiff great bodily injury.

16. As a sole result of the aforementioned incident caused by the intentional and/or careless, reckless, grossly negligent and negligent conduct of the Defendants, Plaintiff, **Timothy Kersey**, has sustained serious, painful and permanent injuries, internally and externally, to his head, face, eyes, nose, ears, neck, back, chest, ribs, arms, hands, legs, knees and feet, and his bones, cartilages, ligaments, muscles, nerves, blood vessels and soft tissues attached thereto were fractured, herniated, wrenched, bruised and otherwise injured including, but not limited to brain damage with bihemispheric functional disturbance, uncontrollable convulsions, disequilibrium, concussion, lumbar disc damage, sprain and strain of the spinal regions, radiculopathy; he suffered other serious orthopedic and neurological injuries; some or all of which are or may be aggravations of pre-existing conditions, the full extent of which have

not as yet been ascertained; he suffered excruciating and agonizing aches, pains and mental anguish, some or all of which are or may be permanent in nature.

17. As a result of this incident, Plaintiff, **Timothy Kersey**, has been and continues to be obliged to receive medical attention, medical care, physical therapy and medical treatment and care and to expend various sums of money and incur diverse medical expenses and/or surgical charges and other medical, diagnostic and hospital expenses for the severe injuries which he has suffered and he will and/or may be obliged to continue to make medical, hospital and/or surgical expenditures for an indefinite time in the future, all to his great and continuing detriment and loss.

18. As a direct and sole result of this incident, Plaintiff, **Timothy Kersey**, has or may hereinafter incur other financial expenses, medical bills, and/or other losses which do or may exceed amounts which he may otherwise be entitled to recover, as well as further non-economic losses, and also loss of services and other items of damages including a loss of earnings and/or a loss of earning capacity, all of which are recoverable.

19. As a further result of the incident aforesaid, Plaintiff, **Timothy Kersey**, has, may and will probably in the future continue to suffer great pain and extreme agony, has required surgery, and he has been, and probably will in the future be hindered and prevented from attending to his usual daily duties, labors, occupations and household chores, thereby resulting in a loss, depreciation and diminution of his earnings and earning capacity, all to his great and continuing detriment and loss.

20. As a direct and sole result of this incident, Plaintiff, **Timothy Kersey**, has and will hereinafter incur other financial expenses, damages and/or losses, including but not limited to loss of earnings, earning capacity, medical bills, hospital bills, and other medical expenses which do or may exceed amounts which he may otherwise be entitled to recover, as well as further non-economic losses, extreme pain and suffering and also loss of services and other items of damage, all of which are recoverable.

21. As a further result of the instant occurrence, Plaintiff, **Timothy Kersey**, has suffered an injury which is, may and shall be in full or in part a serious impairment of or a permanent loss of a bodily function, a permanent disfigurement or a permanent dismemberment, which is, may or shall be permanent, irreparable and severe.

**Claims against Belmont Behavioral Health Hospital and BCCT Over Corp**

22. At the time and place aforesaid, the carelessness, negligence, gross negligence and recklessness of the Defendants **Belmont Behavioral Health Hospital and BCCT Over Corp**, individually, jointly and/or severally consisted of the following:

- a) failing to employ proper and safe, agents, servants, workmen, employees and/or bailees;
- b) placing Plaintiff alone with individuals which Defendants knew or should have known to have violent and dangerous propensities and characteristics;
- c) Allowing dangerous psychiatric patients to mingle with visitors and/or business invitees;
- d) failing to operate, manage, supervise, control and maintain the business operations in a proper, appropriate and reasonable manner so as to avoid confrontations between patients and business invitees and/or visitors;
- e) negligently handling a confrontation with a patron;
- f) failing to render aid to the Plaintiff;
- g) failing to adequately staff and supervise a business open to the public;
- h) failing to exercise proper and adequate control, instruction and supervision of their agents, staff members, servants, workers, security guards and/or employees;
- i) failing to have employees and/or security guards in the area into which Plaintiff was placed with the dangerous individual;
- j) failing to properly train and instruct employees and/or technicians and/or staff members and/or security guards as to the performance of their duties;
- k) failing to restrain the patient that attacked Plaintiff;
- l) failing to properly assist and aid Plaintiff, **Timothy Kersey**, while he was being beaten, battered and assaulted by a dangerous psychiatric patient;

- m) failing to implement training programs for agents servants, security guards and employees in handling emergency situations at the psychiatric establishment;
- n) failing to properly instruct their agents, servants, workmen, employees and/or bailees;
- o) failing to protect Plaintiff as a business invitee and/or visitor from harm in a proper, safe and prompt fashion;
- p) failing to provide an alternate room for Plaintiff to wait in;
- q) failing to remove unruly and rowdy patients from the premises;
- r) failing to warn Plaintiff that the other persons in the room were patients;
- s) failing to use due care under the circumstances;
- t) violating the provisions of the Restatement (Second) of Torts;
- u) failing to promptly call the police when Plaintiff was being beaten battered and assaulted;
- v) failing to give adequate warning and/or have adequate warning signs;
- w) failing to have enough security guards;
- x) being otherwise negligent and grossly negligent;
- y) failing to warn Plaintiff that the other persons in the room were had mental problems and were dangerous, despite having knowledge thereof;
- z) acting in a grossly negligent fashion by allowing Plaintiff to get attacked by patients that Defendants knew had a violent propensity, and failing to provide any protection to Plaintiff whatsoever;
- aa) failing to have proper video surveillance in the room;
- bb) allowing Plaintiff to be physically thrown to the ground and repeatedly punched and/or kicked;
- cc) failing to use the proper level of security necessary to quell a confrontations between patients;
- dd) failing to train and/or instruct their employees on how to deal with an emergency situation;
- ee) Failing to isolate the violent patient that attacked Plaintiff;
- ff) negligently causing fear, terror and fright within the Plaintiff;



- gg) failing to supervise a dangerous patient while in the company of others;
- hh) failing to have policies on handling confrontations with invitees and/or patients;
- ii) being otherwise negligent;
- jj) tacitly allowing the attack to happen;
- kk) negligently creating an atmosphere of violence;
- ll) failing to otherwise warn the Plaintiff;
- mm) failing to have enough employees on hand given the nature of the establishment;
- nn) failing to have enough employees on hand in a psychiatric ward;
- oo) failing to restrain the unruly and vicious patient, **Jamal Smith**;
- pp) failing to realize that the patient, **Jamal Smith**, would attack Plaintiff;
- qq) hiring security guards and/or doctors and/or employees without sufficient training;
- rr) failing to seclude Jamal Smith and/or otherwise confine Defendant so as to remove him as a threat to other patients and business invitees such as Plaintiff.

**COUNT I**  
**PLAINTIFF vs. BELMONT BEHAVIORAL HEALTH HOSPITAL**

23. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

24. As a result of the aforementioned negligence, recklessness, gross negligence and carelessness of the Defendants, Plaintiff, **Timothy Kersey**, was caused to be beaten and sustain serious, painful and permanent orthopedic injuries.

**WHEREFORE**, Plaintiff, **Timothy Kersey**, claims damages of the Defendants, individually, jointly and/or severally, for an amount in excess of Fifty Thousand Dollars (\$50,000.00).

**COUNT II**  
**PLAINTIFF vs. BCCT OVER CORP.**

25. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

26. As a result of the aforementioned negligence, recklessness, gross negligence and carelessness of the Defendants, Plaintiff, **Timothy Kersey**, was caused to be beaten and sustain serious, painful and permanent orthopedic injuries.

**WHEREFORE**, Plaintiff, **Timothy Kersey**, claims damages of the Defendants, individually, jointly and/or severally, for an amount in excess of Fifty Thousand Dollars (\$50,000.00).

### **A S S A U L T**

27. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

28. Defendant, **Jamal Smith**, assaulted and/or put Plaintiff, **Timothy Kersey**, in immediate apprehension of physical harm.

29. Defendant, **Jamal Smith**, knew the likely consequence of his actions would put Plaintiff in immediate apprehension of physical harm.

30. Defendant, **Jamal Smith**, had within his ability the power to carry out the threat of physical violence immediately, and did in fact do so, which did cause Plaintiff harm, fright, pain and damages.

### **COUNT III** **PLAINTIFF vs. JAMAL SMITH** **(Assault)**

31. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

32. As a result of the aforementioned negligence, recklessness, gross negligence and carelessness of the Defendants, Plaintiff, **Timothy Kersey**, was caused to be beaten and sustain serious, painful and permanent orthopedic injuries.

**WHEREFORE**, Plaintiff, **Timothy Kersey**, claims damages of the Defendants, individually, jointly and/or severally, for an amount in excess of Fifty Thousand Dollars (\$50,000.00).

## **BATTERY**

33. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

34. Defendant, **Jamal Smith**, intentionally harmed, maliciously assaulted and battered Plaintiff, **Timothy Kersey**, and did cause Plaintiff to be struck with many violent blows and strikes on and about various parts of his body with great force and violence, and further shook and pulled the Plaintiff; and threw Plaintiff down to the ground and violently administered a great many other blows, kicks and strokes.

35. At all times herein material, Plaintiff did not consent to any physical contact with Defendant, **Jamal Smith**, and was injured, harmed and sustained damages as a result of said physical contact.

36. At all times herein material, Defendant, **Jamal Smith**, did batter Plaintiff in front of Co-Defendants, who should have shielded Plaintiff from the attack.

### **COUNT IV** **PLAINTIFF vs. JAMAL SMITH** **(Battery)**

37. Plaintiff, **Timothy Kersey**, incorporates herein by reference thereto, the preceding paragraphs, inclusive, as fully as though the same were hereinafter set forth at length.

38. As a result of the aforementioned negligence, recklessness, gross negligence and carelessness of the Defendants, Plaintiff, **Timothy Kersey**, was caused to be beaten and sustain serious, painful and permanent orthopedic injuries.

**WHEREFORE**, Plaintiff, **Timothy Kersey**, claims damages of the Defendants, individually, jointly and/or severally, for an amount in excess of Fifty Thousand Dollars (\$50,000.00).

**LOUIS B. HIMMELSTEIN & ASSOCIATES, P.C.**

BY: s/Louis B. Himmelstein  
LOUIS B. HIMMELSTEIN, ESQUIRE  
Attorney for Plaintiff



Court of Common Pleas of Philadelphia County  
 Trial Division  
**Civil Cover Sheet**

PLAINTIFF'S NAME TIMOTHY KERSEY		DEFENDANT'S NAME BELMONT BEHAVIORAL HEALTH HOSPITAL	
PLAINTIFF'S ADDRESS PO BOX 50602 PHILADELPHIA PA 19132		DEFENDANT'S ADDRESS 4200 MONUMENT ROAD PHILADELPHIA PA 19131	
PLAINTIFF'S NAME		DEFENDANT'S NAME BCCT OVER CORP	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 4200 MONUMENT ROAD PHILADELPHIA PA 19131	
PLAINTIFF'S NAME		DEFENDANT'S NAME JAMAL SMITH	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 3126 HAVERFORD AVENUE PHILADELPHIA PA 19104	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 3	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2M - MALPRACTICE - MEDICAL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED <b>PRO PROTHY</b> JAN 04 2018 C. MILLER	
		IS CASE SUBJECT TO COORDINATION ORDER? YES    NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>TIMOTHY KERSEY</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY LOUIS B. HIMMELSTEIN		ADDRESS LOUIS B HIMMELSTEIN&ASSOCIATES 1420 WALNUT ST SUITE 1000 PHILADELPHIA PA 19102	
PHONE NUMBER (215) 790-9996	FAX NUMBER (215) 790-9055		
SUPREME COURT IDENTIFICATION NO. 41140		E-MAIL ADDRESS lawyers@himmelsteinlawoffices.com	
SIGNATURE OF FILING ATTORNEY OR PARTY LOUIS HIMMELSTEIN		DATE SUBMITTED Thursday, January 04, 2018, 03:00 pm	