

Please Read Instructions on Reverse Side of Yellow copy
Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Mr. Mrs. Ms. Miss
Darcy Melder, as Special Administratrix of the Estate of Virginia O'Briant, Deceased, Claimant

Do Not Write in These Spaces
Claim No. 180297
Date Filed September 25, 2017
Amount of Claim \$ Unknown
Fund DOH
Pers Injury, Negligence, Pain and Suffering

vs.
State of Arkansas, Respondent

Ark. Dept. of Health
Darcy Melder, as Special Administratrix of the Estate of Virginia O'Briant, Deceased, the above named Claimant, of

COMPLAINT

represented by Geoff Thompson (Legal Counsel, if any, for Claim)
of Rainwater, Holt & Sexton, P.A.; P. O. Box 17250, Little Rock, AR 72222-7250; (501)868-2500; (501)868-2500 says:

State agency involved: Arkansas Department of Health, Desha County In-Home Services
Amount sought: Unknown at this time
Month, day, year and place of incident or service: On or about October 14, 2015

Explanation:
1. Virginia O'Briant, age 93, was under the care and supervision of home health employee Alean Jones, who was in the employ of the State of Arkansas, Arkansas Department of Health, Desha County In-Home Services. On October 14, 2015, Virginia O'Briant was left in an unsafe environment and was neither properly secured nor carefully monitored. As a result of the negligence and improper care and supervision by the Respondent, Mrs. O'Briant suffered a fracture of her right hip, contusions to her right wrist and elbow, pain and suffering, debilitation to bed bound status, a rapid mental decline, and other damages.

(Explanation of Complaint continued on page 2)

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
No. N/A; when? N/A; to whom? N/A
and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? N/A; if so, state name and address
and that the nature thereof is as follows: N/A; and was acquired on N/A, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.
Darcy Melder, as Special Administratrix of the Estate (Print Claimant/Representative Name)
Darcy Melder (Signature of Claimant/Representative)

HILARY SHRUM
Pulaski County
Commission Number 12365421
Notary Public - Arkansas
My Commission Expires March 31, 2018

SWORN TO and subscribed before me at Little Rock ARKANSAS
on this 14th day of September, 2017
Hilary Shrum (Notary Public)
My Commission Expires: March 31, 2018

Explanation of Complaint Continued

Page 2 of 3

2. Mrs. O'Briant was under the care of Arkansas Department of Health In-Home Services since 4/15/15. Mrs. O'Briant had a history of frequently falling or being lowered to the floor but had no injuries noted per Kathy, her daughter and Alean Jones HHA. On 10/14/15, Mrs. O'Briant in the bathroom for her daily scheduled shower. Ms. Jones did not properly secure the shower chair and/or adequately assist and secure Mrs. O'Briant in the chair. As a result, the chair slid forward and Mrs. O'Briant fell across the tub behind the chair. She complained of severe pain to her right hip. The family was notified and an ambulance was called. RN arrived as EMTs loaded patient onto the stretcher. RN notified MD. She was transferred to Delta Memorial Hospital to assess for injuries. Patient's daughter, Kathy O'Briant was home at the time but did not witness this occurrence. Leisa Creighton, supervisor was notified and an occurrence report was emailed to her.

3. Mrs. O'Briant was transferred to Delta Memorial Hospital ER instead of Jefferson Regional Medical Center per the family's request. The family was instructed there was not a surgeon on staff at Delta Memorial Hospital to treat a hip fracture and she would have to be transferred elsewhere. The family understood this. Arrangements were made for her transfer to Baptist Medical Center in Little Rock.

4. Mrs. O'Briant was admitted to BMC-LR with a right hip periprosthetic fracture with bipolar loosening, osteopenia, acetabular arthritis, right wrist and elbow contusions with osteopenia but no fractures. She underwent surgical repair of her right hip fracture on 10/15/15. She required blood transfusion following surgery. After surgery, she slowly progressed in therapy. On 10/21/15, she was cleared for discharge. She was in fair condition. She was partial weight bearing to her right leg with hip abduction pillow, wheelchair transfers and walker. She was on Norco for pain. She was discharged to Drew Memorial Hospital Swing Bed.

5. Mrs. O'Briant was admitted under the care of Dr. Jeffrey Reinhart on 10/21/15 to start PT. Currently she was not ambulatory. She was started on Potassium replacement, Ensure supplements and with her labs and blood pressure monitored. She was treated with Rocephin for UTI. She was doing some better but she required PT to assist with her to sit up in bed. She did not progress in therapy to her previous level of care. She voiced no complaints other than wanting to go home. She was not eating much. Her daughter stated that she wanted to go "home" which meant to Heaven. The family was considering home health vs. hospice. She was discharged home.

6. A referral was made to Arkansas Hospice on 11/11/15. The family wanted Mrs. O'Briant to be inpatient hospice if possible. She was admitted to Arkansas Hospice at home on 11/11/15. Her terminal diagnosis was Alzheimer's disease. She was not eating and drinking. She was less responsive. She required total assistance with all care. Mrs. O'Briant rapidly deteriorated.

7. On 11/24/15, the family requested she be sent to the hospital requesting respite care. They decided they were unable to care for her in the home. Arrangements were made and Mrs. O'Briant was transferred to Delta Memorial Hospital. Mrs. O'Briant remained on respite care at the hospital. Her pain was

Explanation of Complaint Continued

Page 3 of 3

managed and she was made comfortable as comfort measures continued. On 11/27/15, she was found without vital signs and was pronounced dead of natural causes at 0800. Cause of death was end stage Alzheimer's disease dementia.

8. The Special Administratrix, Darcy Melder, brings this claim on behalf of Virginia O'Briant and her estate due to the above negligent equipping, staffing, training, supervision, care, and treatment against the State of Arkansas, Arkansas Department of Health, Desha County In-Home Services, and their employees and agents for all damages allowable under AMI (Civil) 2216. These include, but are not limited to, Virginia's conscious pain and suffering prior to her death, medical expenses attributable to her injury, and any scars, disfigurement, or visible results of the injury sustained by her prior to her death.

9. The attached exhibits are as follows:

Exhibit A: Copy of the Order Appointing Special Administratrix

ARKANSAS STATE CLAIMS COMMISSION
NON VEHICLE PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SECTION 1 Darcy Melder, as Special Administratrix of
CLAIMANT the Estate of Virginia O'Briant, Deceased **ADDRESS** [REDACTED]
CITY & STATE [REDACTED] **ZIP CODE** 71655

DATE OF INCIDENT: October 14, 2015 **TIME** Exact time is unknown

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

Virginia O'Briant, age 93, was under the care and supervision of home health employee Alean Jones, who was in the employ of the State of Arkansas, Arkansas Department of Health, Desha County In-Home Services. On October 14, 2015, Virginia O'Briant was left in an unsafe environment and was neither properly secured nor carefully monitored. As a result of the negligence and improper care and supervision by the Respondent, Mrs. O'Briant suffered a fracture of her right hip, contusions to her right wrist and elbow, pain and suffering, debilitation to bed bound status, a rapid mental decline, and other damages.

(If personal injury claim only, move on to Section IV)

SECTION II

Has this property been repaired? Yes () No () If repairs have been made, give the following information: Amount: \$ _____ Have you paid for the repairs? Yes () No ()

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

NAME	ADDRESS	AMOUNT
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

SECTION III

Was property covered by insurance? Yes () No ()
 If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER _____ **ADDRESS** _____

SECTION IV

Is injured covered by medical insurance? Yes (X) No ()

If yes, what is the deductible? \$ N/A

NAME OF INSURANCE CARRIER _____ **ADDRESS** _____
Medicare _____ P.O. Box 1437, Slot S296, Little Rock, Arkansas 72203
Medicaid _____ P.O. Box 138832, Oklahoma City, OK 73113

SECTION V

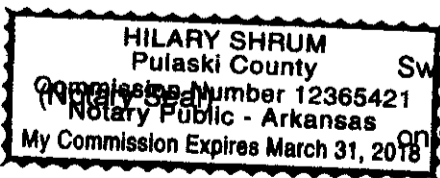
If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: N/A

SECTION VI

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Darcy Melder
 Signature of Claimant

 City & State Little Rock, Arkansas



Sworn to and subscribed before me at _____ on this 14th day of September 2017
 day month year

My Commission Expires March 31, 2018

Hilary Shrump
 Signature of Notary Public

COPY

IN THE CIRCUIT COURT OF DESHA COUNTY, ARKANSAS
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF
VIRGINIA O'BRIANT, DECEASED

NO. PR-2015-81-3

ORDER APPOINTING SPECIAL ADMINISTRATRIX FOR
AUTHORITY TO CONTRACT WITH COUNSEL AND FILE SUIT OR
PURSUE SETTLEMENT ON BEHALF OF THE ESTATE

On this date, there is presented to the Court the petition of Darcy Melder, daughter of the deceased, for appointment of Special Administratrix of the Estate of Virginia O'Briant, deceased. Upon consideration of such petition, and the facts and evidence in support thereof, the Court finds:

1. The decedent, Virginia O'Briant, age 93, who resided in Desha County, Arkansas, died in Desha County, Arkansas, on or about the November 27, 2015.
2. This Court has jurisdiction and venue properly lies in this county.
3. Darcy Melder is fully qualified by law to serve as Special Administratrix of such estate and administer the estate of the deceased.
4. Darcy Melder as Special Administratrix of the Estate shall have the authority to authorize settlement or file a claim for personal injuries or wrongful death on behalf of the estate in a Court of competent jurisdiction and shall have the authority to contract with the law firm of Rainwater, Holt & Sexton, P.A., for the purpose of pursuing said settlement or litigation.
5. The petition for appointment has not been opposed by any interested person.
6. No bond shall be required of the petitioner.

IT IS THEREFORE ORDERED that administration of the Estate of Virginia O'Briant be and hereby is opened for the purpose of pursuing a legal claim for personal injuries or wrongful death;

FILED

1/25/16
Valerie Donaldson, Desha County Clerk

By: Devin Fosterling Deputy

1

RECORD

Valerie Donaldson, Desha County Clerk

By: Devin Fosterling Deputy

EXHIBIT
A

that Darcy Melder, is named Special Administratrix of the Estate of the decedent to serve without bond; that Special Letters of Administration shall be issued to such person upon filing of her Acceptance of Appointment; that Darcy Melder, as Special Administratrix shall have the authority to contract with the law firm of Rainwater, Holt & Sexton, P.A. for the purpose of negotiating settlement or pursuing a legal action on behalf of the estate, and after completion of the claim, shall be discharged as Special Administratrix of the estate without further proceedings.

IT IS SO ORDERED this 12 day of Jan, 2016.


JUDGE

Prepared by:
Geoff Thompson, ABN 2002093
801 Technology Drive
Post Office Box 17250
Little Rock, Arkansas 72222
Telephone: (501) 868-2500
Fax: (501) 868-2505



RAINWATER HOLT & SEXTON
I N J U R Y L A W Y E R S

Mailing Address:
P.O. Box 17250, Little Rock, AR 72222
Phone: 800-434-4800 Fax: 501-868-2505
CallRainwater.com

December 18, 2019

VIA EMAIL ONLY

Kathryn Irby
Arkansas State Claims Commission
E-Mail: Kathryn.Irby@Arkansas.gov

RE: O'Briant v. ADHS
Claim No. 180297

Dear Mrs. Irby:

Pursuant to our previous conversation, attached hereto is a copy of the settlement agreement that has been signed by my client and the Arkansas Department of Health. If you or the Commission needs any additional information about this matter, please do not hesitate to contact me. Also, can you please confirm that the hearing scheduled for the case on 2/14/2020 will be cancelled?

Thank you and the Commission for your attention to this matter. I am copying Mr. Rogers, attorney with the Arkansas Department of Health, on this communication.

Very truly yours,



Jeff Priebe

CC: Reggie Rogers (via email only; Reginald.Rogers@Arkansas.gov)
Geoff Thompson (via email only; GThompson@RainFirm.com)

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

DARCY MELDER, SPECIAL ADMINISTRATRIX
OF THE ESTATE OF VIRGINA O'BRIANT

CLAIMANT

VS.

CLAIM NO. 180297

STATE OF ARKANSAS /
ARKANSAS DEPARTMENT OF HEALTH

RESPONDENT

SETTLEMENT AGREEMENT

WHEREAS, an action is pending in the Arkansas State Claims Commission styled Darcy Melder, Special Administratrix of the Estate of Virginia O'Briant vs. State of Arkansas / Arkansas Department of Health (hereinafter referred to as the "Action") pursuant to which the Claimant in this Action, Darcy Melder, Special Administratrix of the Estate of Virginia O'Briant (referred to as "Claimant"), has brought a claim against the Respondent, State of Arkansas / Arkansas Department of Health (referred to as "Respondent"), for damages, medical bills, pain and suffering, and decline in health related to home health services provided, or that should have been provided to Claimant by Respondent between April 15, 2015 and October 14, 2015, including but not limited to the failure to provide appropriate services to Claimant on October 14, 2015, which resulted in a fractured left hip, pain, suffering, hospitalization and subsequent health decline. The Respondent denies the allegations in the claim.

WHEREAS, the Claimant and the Respondent desire to compromise and settle the Action to avoid the costs and uncertainties of continued litigation;

NOW, THEREFORE, the Claimant and the Respondent agree to the following terms as full and final satisfaction of any and all claims:

1. COMPLETE RELEASE AND WAIVER. In exchange for \$115,000.00 (one-hundred and fifteen thousand dollars and no cents) and for other good and valuable consideration, the sufficiency and adequacy of which is hereby expressly acknowledged, each party hereto does hereby irrevocably and unconditionally release, acquit, remise, and forever discharge the other party hereto from any and all rights, promises, obligations, liens, claims, demands, liabilities, actions, and causes of actions of whatever kind and character including appeals, in law or equity, in contract, tort or other, both known and unknown, disclosed and undisclosed, actual and consequential, specific and general, however denominated, including but not limited to those arising out of or in any way connected with the events and incidents of Claimant's claim and/or payment of expenses related to Claimant's life or medical care that is the subject of, has been the subject of, or could have been the subject of this case, for any past, present, or future claim, relief, or cause of action, no matter how denominated, income from any source, declaratory or injunctive relief, compensatory, liquidated or punitive damages, wages, money, remuneration, or thing of value whatsoever, by the Releasing Party against the Released Party, including, without limitation, any allegations, causes of

action, claims and/or matters caused by, arising out of, related to or in any way connected with the employment, association, affiliation, agency, contract, or contact of whatever character or nature of Claimant with Respondent, and or arising under, relating to or covered by any federal, state or local ordinance, law, statute, act, custom, usage, rule or regulation and including, without limitation, any claim or cause of action which was, or could have been stated in Darcy Melder, Special Administratrix of the Estate of Virginia O'Briant vs. State of Arkansas / Arkansas Department of Health. It is understood, agreed and stipulated between the parties hereto that the consideration described herein is in complete and full accord, satisfaction, and discharge of any and all doubtful or disputed claims, whatsoever, of which all said claims are expressly denied by Released Party.

2. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties. The Claimant and Respondent have not relied upon any promise or statement, oral or written, which is not set forth in this Agreement.

3. MODIFICATION. The Claimant and Respondent agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all parties.

4. VOLUNTARY AGREEMENT. The Claimant and Respondent acknowledge that each has read this Agreement, that each has, and has had, the opportunity to consult with legal counsel of their choosing

concerning the advisability, meaning, and effect of this Agreement, and that each has signed this Agreement voluntarily and without duress.

5. ACKNOWLEDGEMENT. Claimant and Respondent acknowledge that this document was agreed upon by both sides; the terms of which will not be construed against either side as the drafter.

6. NO ADMISSION OF LIABILITY. The Claimant and Respondent acknowledge that this Agreement is a compromise and is not an admission of liability or wrongdoing on the part of the Respondent, or any officer, employee, or official of the Respondent. Claimant agrees not to suggest or construe this Agreement as an admission or implication of wrongdoing on the part of the Respondent, or any officer, employee, or official of the Respondent and that the Agreement is not admissible in any court or administrative body except as necessary to enforce its terms or as otherwise required by law.

7. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arkansas.

8. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the Claimant and Respondent, and each of their respective heirs, descendants, successors, and assigns.

9. EFFECTIVE DATE. This Agreement shall not become effective until approved by the Arkansas State Claims Commission, the Claims

Review Subcommittee of the Arkansas Legislative Council, and the Arkansas General Assembly; the settlement monies are appropriated by the General Assembly; the appropriation is funded, and the monies are received by Claimant.

10. COUNTERPARTS. This Agreement may be executed in counterparts and the counterparts taken together shall have binding effect.

CLAIMANT

By: 

Title: Special Administratrix of the Estate of Virginia O'Briant

Date: 12/18/2019

RESPONDENT

By: 
Stephanie Williams

Title: Chief of Staff, Arkansas Department of Health

Date: December 12, 2019

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**DARCY MELDER, SPECIAL
ADMINISTRATRIX OF THE
ESTATE OF VIRGINIA O'BRIANT**

CLAIMANTS

V.

CLAIM NO. 180297

**ARKANSAS DEPARTMENT OF
HEALTH**

RESPONDENT

ORDER

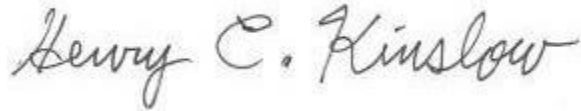
Now before the Arkansas State Claims Commission (the "Claims Commission") is the Settlement Agreement signed by Darcy Melder, as special administratrix of the Estate of Virginia O'Briant (the "Claimant") and the Chief of Staff of the Arkansas Department of Health.

Based upon a review of the pleadings and the Settlement Agreement, the Claims Commission hereby APPROVES the Settlement Agreement.

As such, the Claims Commission refers the award of \$115,000.00 to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

The hearing scheduled for February 14, 2020, has been removed from the Claims Commission docket.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: December 26, 2019

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).