

Arkansas
State Claims Commission
AUG 18 2017

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Mr.
 Mrs.
 Ms.
 Miss
Christine Bodkins, Claimant

| Do Not Write in These Spaces | |
|--|--|
| Claim No. | <u>190151</u> |
| Date Filed | <u>8/18/17</u> (Month) (Day) (Year) |
| Amount of Claim \$ | <u>1,000,000.00</u> |
| Fund | <u>UAMS</u> |
| <u>Negligence, Personal Injury, Pain & Suffering</u> | |

vs.
State of Arkansas, Respondent
University of AR for Medical Sciences

COMPLAINT

Christine Bodkins, the above named Claimant, of 311 A. North New York St. Brinkley
(Name) (Street or R.F.D. & No.) (City)
AR 72021 501-595-8862 County of Monroe represented by Darryl E. Baker
(State) (Zip Code) (Daytime Phone No.) (City) (Legal Counsel, if any, for Claim)
of 2311 Biscayne, Ste 300 Little Rock AR 72227 (501) 537-1000 537-1001, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: University of Ark. for Medical Sciences Amount sought: \$1,000,000
Month, day, year and place of incident or service: September 2, 2011--discovered August 22, 2016

Explanation: I was a surgical patient at the University of Arkansas for Medical Sciences on September 2, 2011. A sponge was left in my body by the surgical team. The sponge was not discovered until August 22, 2016. I suffered physical pain from the date of the surgery until October 24, 2016, and then post-surgical pain after that. I did not know that the pain was caused by a sponge left in my body in surgery. I have incurred medical care and expenses, lost earning capacity, and there is a permanent scar from the second surgery.

The attached Complaint sets out my claim in full.

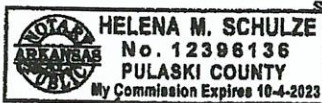
As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? No; when? _____; to whom? _____
(Yes or No) (Month) (Day) (Year) (Department)

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address _____
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: _____; and was acquired on _____, 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.

Christine Bodkins Christie Bodkins
(Print Claimant/Representative Name) (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock AR
(City) (State)



on this 18th day of August, 2017
(Date) (Month) (Year)

Helena M. Schulze

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

SECTION 1
CLAIMANT Christine Bodkins ADDRESS 311 A. North New York Street
CITY & STATE Brinkley, AR ZIP CODE 72021

DATE OF INCIDENT: September 2, 2011 TIME _____

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:
I was a surgical patient at the University of Arkansas for Medical Sciences. A sponge was left in my body.

(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.

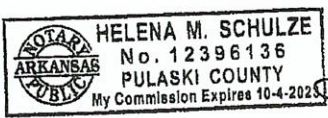
| NAME | ADDRESS | AMOUNT |
|----------|---------|----------|
| 1. _____ | _____ | \$ _____ |
| 2. _____ | _____ | \$ _____ |
| 3. _____ | _____ | \$ _____ |

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 () No () Medicaid
If yes, what is the deductible? \$ unknown
NAME OF INSURANCE CARRIER ADDRESS

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

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.



Christie Bodkins
Signature of Claimant
Helena M Schulze

IN THE STATE CLAIMS COMMISSION OF ARKANSAS

CHRISTINE BODKINS

PLAINTIFF

VS.

CV-17-_____

KIMBERLY REYNOLDS, M.D.; AMY
PHILLIPS, M.D.; JAMIE HYMEL, M.D.,
ADAM SILLS, M.D.; L. VADEN, S.T.;
A. RHEA, S.T.; S. NEWTON, S.T.; G.
HARPER, R.N.; C. WILSON, R.N.; S.
JOHNSON, R.N.; UNIVERSITY OF
ARKANSAS FOR MEDICAL
SCIENCES; JOHN DOE 1; JOHN DOE
2; JOHN DOE 3; and JOHN DOE 4.

DEFENDANTS

COMPLAINT

Comes the Plaintiff, Christine Bodkins, by and through her attorneys,
McDaniel Law Firm, PLC, and for her complaint against the Defendants,
states:

1. That the plaintiff was at the time of the occurrence of the events
in this cause of action and at the time of the filing of this action, a resident of
Brinkley, Monroe County, Arkansas.
2. That the Defendant, Kimberly Reynolds, MD, hereinafter
known as "Dr. Reynolds", was, upon information and belief, at all times
pertinent to events referred to in this Complaint, a medical doctor practicing
general surgery and had her principal place of business and practice at the
defendant, University of Arkansas for Medical Sciences (UAMS) located at
4301 W. Markham St., Suite 520-1, Little Rock, Arkansas.
3. That, upon information and belief, at all times pertinent to the
events referred to in this Complaint, Dr. Reynolds was an agent, employee,
and/or servant of the defendant, UAMS.
4. That the Defendant, Amy Phillips, MD, hereinafter known as
"Dr. Phillips", was, upon information and belief, at all times pertinent to

events referred to in this Complaint, was an assisting surgeon during the surgery of Christine Bodkins on September 2, 2011.

5. That Dr. Phillips, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.

6. That the defendant, Adam Sills, MD, upon information and belief, hereinafter known as "Dr. Sills", was a surgery resident assisting the surgery of September 2, 2011, and was practicing within the course and scope of his association with the defendant, UAMS.

7. That, upon information and belief, at all times pertinent to the events referred to in this Complaint, Dr. Sills was an agent, employee, and/or servant of the defendant, UAMS.

8. That the defendant, Jamie Hymel, MD, upon information and belief, hereinafter known as "Dr. Hymel", was a surgery resident assisting the surgery of September 2, 2011, and was practicing within the course and scope of her association with the defendant, UAMS.

9. That, upon information and belief, at all times pertinent to the events referred to in this Complaint, Dr. Hymel was an agent, employee, and/or servant of the defendant, UAMS.

10. That the defendant L. Vaden, ST, upon information and belief, served as a surgical technician to Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.

11. That the defendant L. Vaden, ST, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.

12. That the defendant A. Rhea, ST, upon information and belief, served as a surgical technician to Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.
13. That the defendant A. Rhea, ST, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.
14. That the defendant S. Newton, ST, upon information and belief, served as a surgical technician to Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.
15. That the defendant S. Newton, ST, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.
16. That the defendant G. Harper, RN, upon information and belief, assisted Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.
17. That the defendant G. Harper, RN, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.
18. That the defendant C. Wilson, RN, upon information and belief, assisted Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.
19. That the defendant C. Wilson, RN, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.
20. That the defendant S. Johnson, RN, upon information and belief, assisted Dr. Reynolds during the plaintiff's surgery of September 2, 2011, at UAMS.

21. That the defendant S. Johnson, RN, upon information and belief, at all times pertinent to events referred to in this Complaint, was an agent, employee, and/or servant of the defendant, UAMS.

22. That, upon information and belief, at all times pertinent to the events referred to herein, the defendants, Dr. Reynolds, Dr. Phillips, Dr. Sills, and Dr. Hymel were practicing general surgery within the course and scope of their association with the defendant, UAMS.

23. That all the negligent actions, commissions, inactions, and omissions of the defendants, Dr. Reynolds, Dr. Phillips, Dr. Sills, and Dr. Hymel, are imputed to the defendant, UAMS, under the legal doctrine of Respondeat Superior and/or actual or apparent agency authority.

24. That all the negligent actions, commissions, inactions, and omissions of the defendants Dr. Phillips, Dr. Sills, and Dr. Hymel are imputed to the defendant, Dr. Reynolds who was the attending surgeon and who had the responsibility to instruct and supervise Dr. Phillips, Dr. Sills, and Dr. Hymel during the surgery of September 2, 2011.

25. That all the negligent actions, commissions, inactions, and omissions of the defendants L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, are imputed to the defendant, UAMS, under the legal doctrine of Respondeat Superior and/ or apparent agency authority.

26. That all the negligent actions, commissions, inactions, and omissions of the defendants L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, are imputed to the defendant, Dr. Reynolds, who was the attending surgeon and who had the responsibility to instruct and supervise L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, during the surgery of September 2, 2011.

27. That all the negligent actions, commissions, inactions, and omissions of the defendants G. Harper, RN, C. Wilson, RN, and S. Johnson,

RN, are imputed to the defendant, UAMS, under the legal doctrine of Respondeat Superior and/ or apparent agency authority.

28. That all the negligent actions, commissions, inactions, and omissions of the defendants G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, are imputed to Dr. Reynolds who was the attending surgeon and who had the responsibility to instruct and supervise G. Harper, RN, C. Wilson, RN, and S. Johnson, RN during the surgery of September 2, 2011.

29. That the defendant, UAMS, is located at 4301 W. Markham Street, Little Rock, Arkansas 72205, and was, at all times pertinent to the events referred to in this complaint, providing in-patient hospital services, outpatient services, and emergency room services and charging fees therefor.

30. That pursuant to Ark. Code Ann. § 16-56-125, any person, for the purpose of tolling the statute of limitations, may file a complaint stating his or her cause of action in the appropriate court of this state, whenever the identity of any tortfeasor is unknown.

31. That, in the alternative, the name of any unknown tortfeasor, individual person or entity, shall be designated by the pseudo-name John Doe. Thus, in this case, John Doe 1-John Doe 4, in the alternative, is the official name of any individual person defendant or entity with which any individual person defendant may be associated, defendant insurance company, or defendant insurance pool. Furthermore, if there is more than one (1) such unknown tortfeasor person or entity, the use of John Doe 2, John Doe 3 and John Doe 4 is also appropriate.

32. That upon determining the identity of any current unknown tortfeasor person or entity, insurance company, or insurance pool, plaintiff will amend the complaint by substituting the real name for the pseudo-name.

33. That the plaintiff has attached hereto the affidavit of plaintiff's attorney that the identity of the tortfeasor(s) is unknown pursuant to Ark. Code Ann. § 16-56-125.

34. That all the acts of medical negligence of the defendants, referred to herein in this complaint occurred in Little Rock, Pulaski County, Arkansas, at the defendant, UAMS.

35. That this Commission has jurisdiction over this cause.

36. That this Commission has jurisdiction over the parties to this action.

37. That the venue of this action is properly placed with this Commission.

38. That this action is timely filed within the applicable statute of limitations.

39. That the plaintiffs specifically allege that no other person or entity, except as referred to herein, directly or indirectly, provided negligent care which caused or contributed to the damages suffered by the plaintiff, other than defendants referred to herein.

40. That a corresponding claim will be filed with the Claims Commission of the State of Arkansas against the University of Arkansas and the State of Arkansas.

41. That this action is brought pursuant to Arkansas Medical Malpractice Act (Ark. Code Ann. § 16-114-201 et seq.), and other applicable laws.

42. That on September 2, 2011, Christine Bodkins was admitted to UAMS for a diagnostic laparoscopy that was converted to an exploratory laparotomy, hereinafter referred to as "the surgery."

43. That Christine Bodkins has suffered ongoing infections, pain, bladder issues, cramps, and discomfort in her abdominal region after the surgery on September 2, 2011.

44. That on August 22, 2016, Christine Bodkins was admitted to Baptist Health Stuttgart Medical Clinic. An abdominal radiograph was administered in which the radiologist found a radiopaque marker in the left lower quadrant of the abdomen, which was determined to be representative of a foreign body.

45. That on October 24, 2016, Christine Bodkins was admitted to St. Vincent in Little Rock with a diagnosis of abdominal pain and a retained foreign body.

46. That on October 24, 2016, Christine Bodkins underwent an exploratory laparotomy during which the surgeon removed from a cystic cavity in her abdomen a foreign body the surgeon deemed consistent with a retained laparotomy sponge.

47. That on October 24, 2016, the removed foreign body was examined by the pathology department at St. Vincent and was confirmed to be a surgical sponge.

48. That the surgical sponge removed on October 24, 2016, hereinafter referred to as "the sponge," had been left in the plaintiff's abdominal cavity during the September 2, 2011, surgical procedure.

49. That there is a shared duty and responsibility by Dr. Reynolds, Dr. Phillips, Dr. Sills, Dr. Hymel, L. Vaden, ST, A. Rhea, ST, S. Newton, ST, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, to properly observe, count, and account for all foreign objects, including the sponge, placed in the abdomen to be certain they are all removed prior to closing the abdomen. This shared responsibility was not met by these individuals who

were working as a surgical team. The team, in its entirety, and by each individual, fell below the standard of care applicable to each of them.

50. The injuries suffered by plaintiff were attributable to the sponge left in plaintiff's abdominal cavity, which was under the exclusive control of defendants, as a surgical team, had been under the exclusive control of defendants, as a surgical team, without any opportunity for the placement of the sponge to have been changed after leaving the possession of the defendants, as a surgical team.

51. That in the normal course of events, plaintiff's injuries would not have occurred if defendants as a surgical team, had used proper care while the sponge was under its exclusive control.

52. That in the alternative, the injuries suffered by plaintiff were attributable to the sponge left in plaintiff's abdominal cavity, which was under the exclusive control of Dr. Reynolds, had been under the exclusive control of Dr. Reynolds, without any opportunity for the placement of the sponge to have been changed after leaving the possession of Dr. Reynolds.

53. That, in the alternative, in the normal course of events, plaintiff's injuries would not have occurred if Dr. Reynolds, had used proper care while the sponge was under his exclusive control.

54. That in the alternative, the injuries suffered by plaintiff were attributable to the sponge left in plaintiff's abdominal cavity, which was under the exclusive control of Dr. Phillips, Dr. Hymel, and Dr. Sills, had been under the exclusive control of Dr. Phillips, Dr. Hymel, and Dr. Sills, without any opportunity for the placement of the sponge to have been changed after leaving the possession of Dr. Phillips, Dr. Hymel, and Dr. Sills.

55. That, in the alternative, in the normal course of events, plaintiff's injuries would not have occurred if Dr. Phillips, Dr. Hymel, and Dr. Sills, had used proper care while the sponge was under their exclusive control.

56. That in the alternative, the injuries suffered by plaintiff were attributable to the sponge left in plaintiff's abdominal cavity, which was under the exclusive control of L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, had been under the exclusive control of L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, without any opportunity for the placement of the sponge to have been changed after leaving the possession of L. Vaden, ST, A. Rhea, ST, and S. Newton, ST.

57. That, in the alternative, in the normal course of events, plaintiff's injuries would not have occurred if L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, had used proper care while the sponge was under their exclusive control.

58. That in the alternative, the injuries suffered by plaintiff were attributable to the sponge left in plaintiff's abdominal cavity, which was under the exclusive control of G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, had been under the exclusive control of G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, without any opportunity for the placement of the sponge to have been changed after leaving the possession of G. Harper, RN, C. Wilson, RN, and S. Johnson, RN.

59. That, in the alternative, in the normal course of events, plaintiff's injuries would not have occurred if G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, had used proper care while the sponge was under their exclusive control.

60. That the defendants, as a surgical team in its entirety, was negligent in the surgery they performed upon the plaintiff on September 2, 2011, and their conduct during that surgery was below the accepted standard of medical care of general surgeons, resident surgeons, surgical technicians, registered nurses, and circulators, in Little Rock, Arkansas, or similar locality, in the following particulars, including but not limited to the following acts of medical negligence:

- (a) In the surgical procedure the surgical team performed on the plaintiff on September 2, 2011, the surgical team, in its entirety negligently left a sponge in the patient's abdominal cavity;
- (b) The medical negligence described in (a) above of leaving the sponge in the abdomen, meets the elements of the legal doctrine of Res Ipsa Loquitur;
- (c) The surgical team, in its entirety, negligently failed to make adequate notes and documentation of the use of the sponge and properly account for its removal before surgical closure;
- (d) The surgical team, in its entirety, negligently failed to count and caused to be counted, the sponge[s] inserted into the abdomen during the surgery, and negligently failed to count and account for sponge[s] used in the surgery before closing the abdomen;
- (e) The surgical team, in its entirety, negligently did not utilize the care and skill of reasonably prudent, general surgeons, resident surgeons, surgical technicians, registered nurses, and circulators in the same or similar circumstances during their performance of the September 2, 2011, surgical procedure on the plaintiff.

61. That in the alternative, the defendant, Dr. Reynolds, was negligent in the surgery she performed upon the plaintiff on September 2, 2011, and her conduct during that surgery was below the accepted standard of medical care of a general surgeon in Little Rock, Arkansas, or similar locality, in the following particulars, including but not limited to the following acts of medical negligence:

- (a) In the surgical procedure Dr. Reynolds performed on the plaintiff on September 2, 2011, Dr. Reynolds negligently left a sponge in the patient's abdominal cavity;
- (b) The medical negligence described in (a) above of leaving the sponge in the abdomen, meets the elements of the legal doctrine of Res Ipsa Loquitur;
- (c) Dr. Reynolds negligently failed to make adequate notes and documentation of the use of the sponge and properly account for its removal before surgical closure;
- (d) Dr. Reynolds negligently failed to count and caused to be counted, the sponge[s] inserted into the abdomen during the surgery, and negligently failed to count and account for sponge[s] used in the surgery before closing the abdomen;
- (e) Dr. Reynolds negligently did not utilize the care and skill of a reasonably, prudent, general surgeon in the same or similar circumstances during his performance of the September 2, 2011, surgical procedure on the plaintiff.

62. That, in the alternative, the defendants, Dr. Sills, Dr. Hymel, and Dr. Phillips, were negligent during the plaintiff's surgical procedure of September 2, 2011, during which they served as resident and assistant surgeons to Dr. Reynolds, and their conduct, care, and skill during that surgery were below the accepted standard of medical care for surgeons in Little Rock, Arkansas, or a similar locality, in the following particulars, including but not limited to the following acts of medical negligence:

- (a) In that surgical procedure, Dr. Sills, Dr. Hymel and Dr. Phillips, negligently assisted Dr. Reynolds in leaving a sponge in the patient's abdominal cavity;
- (b) The medical negligence described in (a) above of leaving the sponge in the abdomen, meets the elements of the legal doctrine of Res Ipsa Loquitur;
- (c) Dr. Sills, Dr. Hymel, and Dr. Phillips, negligently failed to count and caused to be counted, the sponge[s] inserted into the abdomen during the surgery, and negligently failed to count and account for sponge[s] used in the surgery before closing the abdomen;
- (d) Dr. Sills, Dr. Hymel and Dr. Phillips, negligently did not utilize the care and skill of a reasonably, prudent, general

surgeon in the same or similar circumstances during Dr. Reynold's surgery procedure on the plaintiff on September 2, 2011.

63. That, in the alternative, the defendants, L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, were negligent during the plaintiff's surgical procedure of September 2, 2011, during which they served as surgical technicians to Dr. Reynolds, and their conduct, care, and skill during that surgery was below the accepted standard of medical care for surgical technicians in Little Rock, Arkansas, or a similar locality, in the following particulars, including but not limited to the following acts of medical negligence:

- (a) In that surgical procedure, L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, negligently assisted Dr. Reynolds in leaving a surgical sponge in the patient's abdomen;
- (b) The medical negligence described in (a) above of leaving the surgical sponge in the abdomen, meets the elements of the legal doctrine of Res Ipsa Loquitur;
- (c) L. Vaden, ST, A. Rhea, ST, and S. Newton, ST negligently failed to count and caused to be counted, the surgical sponge[s] inserted into the abdomen during the surgery, and negligently failed to count and account for the surgical sponge[s] used in the surgery before closing the abdomen;
- (d) L. Vaden, ST, A. Rhea, ST, and S. Newton, ST, did not utilize the care and skill of reasonably, prudent, surgical technicians in the same or similar circumstances during Dr. Reynold's surgery procedure on the plaintiff on September 2, 2011.

64. That, in the alternative, the defendants, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, were negligent during the plaintiff's surgical procedure of September 2, 2011, during which they served as assistants to Dr. Reynolds, and their conduct, care, and skill during that surgery was below the accepted standard of medical care for registered nurses in Little Rock, Arkansas, or a similar locality, in the following

particulars, including but not limited to the following acts of medical negligence;

- (a) In that surgical procedure, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, negligently assisted Dr. Reynolds in leaving a surgical sponge in the patient's abdomen;
- (b) The medical negligence described in (a) above of leaving the surgical sponge in the abdomen, meets the elements of the legal doctrine of Res Ipsa Loquitur;
- (c) G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, negligently failed to count and caused to be counted, the surgical sponge[s] inserted into the abdomen during the surgery, and negligently failed to count and account for the surgical sponge[s] used in the surgery before closing the abdomen;
- (d) G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, did not utilize the care and skill of reasonably, prudent, registered nurses in the same or similar circumstances during Dr. Reynold's surgery procedure on the plaintiff on September 2, 2011;

65. That in the providing of professional services by the defendants, Dr. Reynolds, Dr. Phillips, Dr. Sills, Dr. Hymel, L. Vaden, ST, A. Rhea, ST, S. Newton, ST, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, to the plaintiff, Christine Bodkins, all these defendants had the duty to have the degree of skill and learning ordinarily possessed by physicians (general surgeons), circulators, surgical technicians, and registered nurses specializing in the same fields and of good standing, practicing in the same or similar locality and under similar circumstances. Furthermore, the defendants were under a duty to use the care and skill ordinarily exercised and possessed in like cases by competent respective members of their profession practicing in the same or similar locality under the same or similar circumstances.

66. That had proper care and skill been utilized during the plaintiff's surgical procedure of September 2, 2011, by Dr. Reynolds, Dr.

Phillips, Dr. Sills, Dr. Hymel, L. Vaden, ST, A. Rhea, ST, S. Newton, ST, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, then a surgical sponge would not have been left in the plaintiff's abdomen, and as a proximate result of which the plaintiff had to endure approximately five years of persistent recurrent infections, bladder issues, pain and discomfort, abdominal cramping, and ultimately a second major surgical procedure for removal of the retained surgical foreign body. This has left her past and future medical expenses, past and future lost earnings and earnings capacity, and past and future pain, suffering, and mental anguish.

67. That as a proximate result of the concurring acts of the negligence of all defendants, Dr. Reynolds, Dr. Phillips, Dr. Sills, Dr. Hymel, L. Vaden, ST, A. Rhea, ST, S. Newton, ST, G. Harper, RN, C. Wilson, RN, and S. Johnson, RN, the plaintiff, Christine Bodkins is entitled to recover damages, in an amount to be set by a jury in excess of the amount for federal court diversity jurisdiction, for the injuries to the plaintiff, including, but not limited to:

- (a) Physical pain, suffering and mental anguish by Christine Bodkins following surgery on September 2, 2011, through the present and into the future;
- (b) The necessity of a second surgical procedure on October 24, 2016;
- (d) Past and future medical care and expenses;
- (e) Permanent scars, disfigurement, and visible results of injury;
- (f) Past lost earnings;
- (g) Future lost earnings capacity; and
- (h) All other damages recoverable with all such damages to be set by a jury in excess of the amount required for federal court diversity jurisdiction against each defendant.

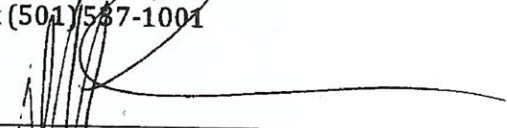
68. That the leaving of a surgical sponge in the abdominal cavity during the surgery of September 2, 2011, on the plaintiff, Christine Bodkins, is negligence, and, furthermore, is the type of negligence that a person of ordinary intelligence, knowledge, and learning can discern. Therefore, no expert testimony is required. The leaving of the surgical sponge in the abdomen of the plaintiff is the type of negligence that does not require expert opinion.

69. That the Plaintiff specifically reserves the right to amend and plead further in this case.

70. That the Plaintiff respectfully demands a jury of twelve (12) persons to try this case.

WHEREFORE, Plaintiff respectfully prays that she have and recover judgment from and against the Defendants in an amount as apportioned by an appropriate and constitutional method by a jury, for compensatory damages as the proof may establish in an amount to be set by the jury in excess of the amount required for federal court diversity jurisdiction, against the defendants, for all elements of damages as set forth herein and as allowed by law, plus costs and all other relief to which she may be entitled.

Respectfully submitted:
**Baker Schulze Murphy &
Patterson**
Attorneys at Law
2311 Biscayne Dr., Suite 300
Little Rock, Arkansas 72227
Telephone (501)537-1000
Fax (501)537-1001

By 
Darryl E. Baker #78008

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTINE BODKINS

CLAIMANT

V.

NO. 18-0151-CC

UNIVERSITY OF ARKANSAS
FOR MEDICAL SCIENCES

RESPONDENT

**JOINT MOTION TO
APPROVE SETTLEMENT AGREEMENT**

Come now Christine Bodkins, by and through her attorney Darryl Baker, and the University of Arkansas for Medical Sciences (UAMS), by and through its attorney Sherri Robinson, and for their Joint Motion to Approve Settlement Agreement, state as follows:

1. Bodkins and UAMS desire to resolve this claim through the attached Release and Settlement Agreement. Exhibit 1.
2. Per the Agreement, the Board of Trustees of the University of Arkansas and UAMS deny that they or any current or former officers, officials, representatives, physicians or employees committed any act of medical negligence.
3. The parties request that the Commission approve the attached Agreement and recommend its approval to the Claims Review Subcommittee or other appropriate legislative committee of the Arkansas General Assembly.
4. Following approval by the Claims Review Subcommittee or other appropriate legislative committee of the Arkansas General Assembly, Claimant agrees to dismiss her action in Pulaski County Circuit Court - *Bodkins v. Reynolds, et al.*, 60CV-17-4409.

C.B.
Initials

RELEASE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into between Claimant, Christine Bodkins, hereinafter referred to as "Bodkins;" and the Board of Trustees of the University of Arkansas, hereinafter referred to as "the Board," on behalf of the University of Arkansas for Medical Sciences, hereinafter referred to as "UAMS," Collectively, Bodkins, the Board and UAMS may be referred to in this Agreement as "the parties."

WITNESSETH:

WHEREAS, Bodkins had surgery at UAMS on September 2, 2011 and a surgical sponge was left in her following surgery which Bodkins alleges constitutes medical negligence;

WHEREAS, the Board and UAMS deny that they or any current or former officers, officials, agents, representatives, physicians or employees committed any act of medical negligence, are liable for any act of medical negligence or any of the acts as alleged by Bodkins in her claim before the Arkansas State Claims Commission or her lawsuit in Pulaski County Circuit Court;

WHEREAS, the parties desire to resolve all potential claims, demands and causes of action which Bodkins has asserted, or may assert, against the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or employees resulting from or arising out of Bodkins' surgery on September 2, 2011 and hospitalization following surgery until September 5, 2011; and

WHEREAS, this agreement resolves all potential claims, demands and causes of action which Bodkins has asserted, or may assert, against the Board, the University of Arkansas, UAMS, or any current or former officers, officials, agents, representatives,

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physicians or employees, resulting from or arising out of Bodkins' surgery on September 2, 2011 and hospitalization following surgery until September 5, 2011.

NOW THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree as follows:

1. ACTION TO BE TAKEN BY THE PARTIES. Bodkins agrees to request the dismissal of *Bodkins v. UAMS*, Claim No. 180151, before the Arkansas State Claims Commission, and *Bodkins v. Reynolds, et al.*, 60CV-17-4409 before the Pulaski County Circuit Court. UAMS agrees to present this agreement to the Claims Commission and applicable legislative subcommittee requesting that payment of \$60,000 be made to Bodkins in settlement of Claim No. 180151.
2. COMPLETE RELEASE AND WAIVER. This Agreement constitutes the entire agreement between the parties and is accepted by Bodkins in full compromise, settlement and satisfaction of, and as sole consideration for the final release and discharge of all potential actions, rights, causes of action, claims and demands whatsoever that now exist or might have been asserted against the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or employees, resulting from or arising out of Bodkins' surgery on September 2, 2011 and hospitalization following surgery until September 5, 2011.
3. ENTIRE AGREEMENT. The performance of item 1 shall constitute the entire settlement, monetary or otherwise, to be paid by the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or employees to Bodkins, and Bodkins shall not receive any other sums from the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or

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employees for any alleged damages or injuries, fees and costs, or any other matter resulting from or arising out of Bodkins' surgery on September 2, 2011 and hospitalization following surgery until September 5, 2011, which Bodkins may have asserted. Neither party has relied upon any promise or statement, oral or written that is not set forth in this Agreement.

4. NO ADMISSION OF LIABILITY. This is a compromise settlement of disputed claims. This settlement and any action undertaken by the Board pursuant thereto, shall never be construed as an admission of liability on the part of the Board, UAMS, or current or former officers, officials, agents, representatives, physicians or employees, each of whom and which expressly denies any such liability. Specifically, this Agreement does not constitute an admission of liability by the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or employees of any violation of any Federal or State law. The Board, UAMS, current or former officers, officials, agents, representatives, physicians and employees have denied and continue to deny all claims and allegations raised by Bodkins in *Bodkins v. UAMS*, Claim No. 180151, before the Arkansas State Claims Commission, and *Bodkins v. Reynolds, et al.*, 60CV-17-4409 before the Pulaski County Circuit Court. Bodkins and her attorneys agree not to suggest or construe this Agreement as an admission or implication of wrongdoing and agree 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.
5. NONDISCLOSURE. Bodkins and her attorneys agree not to disclose the terms of this agreement to anyone unless compelled to do so by legal process.

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6. LIENS AND TAXES. The parties agree that Bodkins shall be responsible for the satisfaction of any liens asserted against the settlement proceeds, if any, and shall be responsible for any and all tax consequences of the settlement proceeds, if any. The Board and its attorneys make no representation regarding the tax consequences or liability, if any, arising from payment of the settlement proceeds.
7. MODIFICATION. This Agreement may not be modified, amended, or altered except by written agreement executed by all parties.
8. CONTRACTUAL NATURE. All parties agree that the terms of this Agreement are contractual in nature and that a breach of any portion of the Agreement shall give the non-breaching party a cause of action for breach of contract in an appropriate forum possessing jurisdiction, with the understanding that by this paragraph, the Board, UAMS, or any current or former officers, officials, agents, representatives, physicians or employees do not waive any immunities or other defenses to which they might be entitled.
9. VOLUNTARY AGREEMENT. Bodkins acknowledges that she has read and understood all of the provisions of this Agreement and had the opportunity to consult an attorney. She further acknowledges that she is entering into this Agreement voluntarily, free of undue influence, coercion or duress of any kind.
10. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the parties and each of their respective agents, executives, administrators, heirs, successors and assigns.
11. NO RESCISSION FOR MISTAKE. The parties acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised by

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Bodkins and any additionally waived and released claims to the extent each deems necessary and appropriate. The parties assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

12. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas.
13. EFFECTIVE DATE. This Agreement is effective upon execution by both parties and approval of the agreement by the Arkansas State Claims Commission and the Claims Review Subcommittee of the Arkansas General Assembly.
14. COUNTERPARTS. This Agreement may be executed in counterparts and the counterparts taken together will have binding effect.
15. EXECUTION. The persons executing this document assert that they are authorized to act on behalf of their clients, agency, and individuals and bind those persons by execution of this document.

IN WITNESS WHEREOF, we have set our hands on the dates indicated below:

Claimant

Board of Trustees of the University
of Arkansas on behalf of UAMS

Christine Bodkins
CHRISTINE BODKINS

CAM PATTERSON, M.D., M.B.A.
Chancellor

1-9-19
Date

1-10-19
Date

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTINE BODKINS

CLAIMANT

V.

CLAIM NO. 180151

**UNIVERSITY OF ARKANSAS FOR
MEDICAL SCIENCES**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the Release and Settlement Agreement (the "Settlement Agreement") signed by Christine Bodkins and a representative of the University of Arkansas for Medical Sciences.

Based upon a review of the pleadings and the Settlement Agreement, the Claims Commission hereby APPROVES the Settlement Agreement, allows this claim in the amount of \$60,000.00, and refers this claim to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: January 11, 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(b). 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(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (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(b). 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).