

Arkansas State Claims Commission

JAN 14 2015

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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
Dolores J. Varner Claimant

Do Not Write in These Spaces
Claim No. 15-0522-CC
Date Filed January 14, 2015
(Month) (Day) (Year)
Amount of Claim \$ 2,175,000.00
Fund DVA

vs.
State of Arkansas, Respondent
Dept. of Veterans Affairs

COMPLAINT

Wrongful Death, Negligence,
Failure to Follow Procedure, Pain
& Suffering, Mental Anguish, Loss

Dolores J. Varner the above named Claimant, of 1815 W. Huntsville Ave. Springdale of Wages,
(Name) (Street or R.F.D. & No.) (City) Refund of
AR 72762 County of Washington represented by Brady & Platt, P.L.C. Expenses
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
or P.O. Box 9298, Fayetteville, AR 72703 479-443-3334 479-443-3341 says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Dept. of Veteran's Affairs Amount sought: \$2,175,000.00

Month, day, year and place of incident or service: January 15, 2013

Explanation: See attached complaint.

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 the following action was taken thereon: _____

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: _____

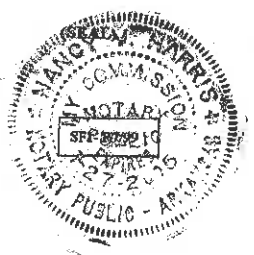
THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.
Dolores J. Varner Dolores J. Varner
(Print Claimant/Representative Name) (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Springdale, AR
(City) (State)

on this 12th day of January, 2015
(Month) (Year)

Nancy V. Barnes
(Notary Public)

My Commission Expires: 01/27/2015
(Month) (Day) (Year)



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

SECTION I
CLAIMANT Dolores J. Varner ADDRESS 1815 W. Huntsville Ave
 CITY & STATE Springdale, AR ZIP CODE 72762
 DATE OF INCIDENT: 01-15-13 TIME 11:30 - 11:50 a.m.

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

See attached.

(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

Arkansas
 State Claims Commission

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SECTION IV

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

If yes, what is the deductible? \$ _____

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: State Survey Agency of the Centers for Medicare + Medicaid Services (CMS)

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.

Dolores J. Varner
 Signature of Claimant

Sworn to and subscribed before me at Springdale, AR
 City & State

on this 12th day of January, 2015.
 day month year



Nancy V. Harris
 Signature of Notary Public

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State Claims Comm.
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ARKANSAS STATE CLAIMS COMMISSION

DOLORES J. VARNER,
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF WILLIAM DALE VARNER

CLAIMANT

VS. CASE NO. _____

ARKANSAS DEPARTMENT OF VETERAN AFFAIRS,
d/b/a as ARKANSAS VETERANS HOME AND FAYETTEVILLE
VETERANS HOME

RESPONDENT

COMPLAINT

Comes now the claimant, Dolores J. Varner, individually and as Personal Representative of the Estate of William Dale Varner, by and through her attorneys, Kathryn E. Platt and W. Blair Brady, and for her complaint of wrongful death against the respondent, Arkansas Department of Veteran Affairs d/b/a Arkansas Veterans Home and Fayetteville Veterans Home, states and alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action for wrongful death, compensatory and statutory damages due to the Estate of William Dale Varner because of the respondent's negligence in failing to provide proper medical care and treatment to Mr. Varner, which directly caused and/or contributed to his untimely death.

2. This action is brought before this Commission not only for compensatory damages, but also to ensure that the Arkansas Department of Veteran's Affairs d/b/a the Arkansas Veteran's Home and Fayetteville Veteran's Home is held to enacted standards of care and medical treatment for its Arkansas patients.

3. The Arkansas Claims Commission has been described as "the conscience of the

state of Arkansas.” The negligence that led to Mr. Varner’s death should bother the conscience of this state and should be rectified with regard to Mr. Varner’s wife, children, grand-children and great grand-children, and should be prevented from happening to other Arkansas veterans and their families in the future.

4. Venue in this action properly lies with this Commission because Arkansas Department of Veteran Affairs d/b/a Arkansas Veterans Home and Fayetteville Veterans Home has no insurance policies to cover the damages alleged in this complaint. Additionally, this Commission has exclusive jurisdiction over claims against the State of Arkansas and its agencies, boards, commissions and/or institutions in accordance with A.C.A. §19-10-201, et seq.

5. The claimant, Dolores J. Varner, is a resident of Washington County, Arkansas, and resides at 1815 W. Huntsville Road, Springdale, Arkansas, 72762. Dolores J. Varner has been duly appointed as personal representative of the Estate of William Dale Varner, the deceased, who died in the manner described below on January 15, 2013, leaving as survivors his wife, Dolores J. Varner; three (3) children, Mark Preston Varner, Mary Denise Wallin and Laura Ann Bailey, fourteen (14) grandchildren and thirty-seven (37) great-grandchildren, for whose benefit the plaintiff is bringing this action.

6. Claimant is represented by Kathryn E. Platt and W. Blair Brady of Brady & Platt, PLC, whose address is P.O. Box 9298, Fayetteville, AR 72703.

7. The respondent, Arkansas Department of Veteran Affairs d/b/a Arkansas Veterans Home and Fayetteville Veterans Home, is a “state agency” as defined in Ark. Code Ann. § 19-4-801.

8. During the time relevant to this Complaint, Arkansas Department of Veteran

Affairs (hereinafter "ADVA") operated intermediate care facilities located in Little Rock and Fayetteville, Arkansas, such as Arkansas Veterans Home and Fayetteville Veterans Home, both of which are skilled nursing facilities.

9. Arkansas Veterans Home and Fayetteville Veterans Home are/were divisions of the Arkansas Department of Veteran Affairs and not separate entities.

II. FACTUAL BACKGROUND

10. William Dale Varner (Mr. Varner) died on January 15, 2013, at the Fayetteville Veteran's Home in Fayetteville, Arkansas.

11. Mr. Varner was admitted to the Fayetteville Veteran's Home on December 28, 2012, from the Veteran's Administration Hospital, also located in Fayetteville, Arkansas, with diagnosis of Dementia, Atrial Fibrillation and Congestive Heart Failure. Mr. Varner scored a 9 on the Brief Interview for Mental Status, which falls within the "moderately impaired" parameter, during his assessment dated January 4, 2013. His score determined that he would need supervision with ambulation and locomotion.

12. The events of January 15, 2013, are as follows:

- a. At approximately 7:00 a.m., Mr. Varner was alert and ready to go to the dining room for breakfast. Mr. Varner went to the dining room, ate breakfast, and while there, at approximately 8:00 a.m., receive his medication due at that hour. Mr. Varner had no complaints of pain or discomfort.
- b. At approximately 8:30 a.m., Mr. Varner was taken back to his room during which time he complained of being weak and had to stop to sit down, which he did. He

was then walked the rest of the way to his bed.

- c. At approximately 11:30 a.m., an occupational therapist (OT) entered Mr. Varner's room for his therapy session. At that time, the OT noted that Mr. Varner was only able to respond to verbal stimuli by opening his eyes and made no verbal response or other movement. He had severe rattling with his breathing. The OT went straight to a licensed practical nurse (LPN#1), who was eating lunch, and asked how the patient was doing that morning. The OT informed LPN#1 that Mr. Varner was not responding to him as he normally did, that he sounded congested and that something was wrong. LPN#1 failed to check on Mr. Varner.
- d. When LPN#1 did not go check on Mr. Varner right away, the OT found a Certified Nursing Assistant (CNA) and requested she check Mr. Varner's vital signs. CNA did check Mr. Varner's vital signs and reported to OT that "they are really low".
- e. CNA advised that his blood pressure was 84/47 and reported this to LPN#1, while LPN#1 was still eating lunch. Again, LPN#1 did not check on Mr. Varner.
- f. When LPN#1 did not check on Mr. Varner after learning his vitals, OT asked the CNA to check Mr. Varner's oxygen level, which she did, and reported to the OT that his oxygen level was 90.
- g. The OT went back into Mr. Varner's room at 11:45 a.m. and immediately noticed that Mr. Varner had very shallow breathing and congested sounds. OT attempted to wake Mr. Varner by shaking him on his right shoulder, with no response. OT then ran into the hallway where he found LPN#1 at the nurses' station and told her

that Mr. Varner was in “big trouble” and that she needed to “come now”. This time, LPN#1 followed OT into Mr. Varner’s room.

- h. OT again tried to arouse patient by saying his name and shaking his right shoulder. OT noted one breath taken by Mr. Varner, at which time he stopped breathing. OT asked LPN#1 what he could do to help. LPN#1 instructed OT to get the Registered Nurse Supervisor #1 (RNS#1).
- i. OT immediately left Mr. Varner’s room and found RNS#1 on the opposite hall. OT informed RNS#1 that LPN#1 needed his help. RNS#1 went straight to Mr. Varner’s room. Upon entering the room RNS#1 stated that it appeared that Mr. Varner was “gone”.
- j. The nurses notes signed by RNS#1 regarding Mr. Varner read: event respiratory/cardiac arrest, pupils fixed, non responsive, no breath sounds, no pulse...expired at 11:50 a.m.

III. DUTY OWED BY RESPONDENT AND LIABILITY

13. The respondent, Arkansas Department of Veteran’s Affairs d/b/a Arkansas Veteran’s Home and Fayetteville Veteran’s Home, is a skilled nursing facility doing business in the State of Arkansas, which participates in the Medicare program.

14. The respondent’s participation in the Medicare program is governed by sections 1819 and 1866 of the Social Security Act (Act), as well as 42 C.F.R. Part 483., specifically, 483.13(c)(1)(ii)-(iii), (c)(2)-(4), 483.25 and 483.75.

Under these provisions, the respondent had the following duties and obligations to Mr.

Varner:

42 C.F.R. 483.13(c)(1)(ii)-(iii), (c)(2)-(4):

(c)The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1)The facility must-

(ii)Not employ individuals who have been-

(A)Found guilty of abusing, neglecting, or mistreating residents by a court of law; or

(B)Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and,

(ii)Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2)The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

(3)The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4)The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days after the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Arkansas
State Claims Commissic

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15. The respondent failed in its duties and obligations under these provisions, as evidenced by Mr. Varner's untimely death and further, as found by the State Survey Agency of the Centers for Medicare & Medicaid Services and reported on form CMS-2567 (Statement of Deficiencies), attached hereto as Exhibit "A". Specifically:

The facility failed to ensure an allegation of neglect against one staff member (LPN#1) was thoroughly investigated, residents were protected during the investigation, and the allegation was reported to the Office of Long Term Care by 11:00 a.m. the next business day in accordance with state law for 1 of 1 (Residents #5)[Mr. Varner] case mix residents who was the subject of an allegation of neglect. This failed practice had the potential to affect 50 residents in the facility who had a change of condition since 1/1/13 according to the listing received from the Administrator on 2/8/13.

16. The respondent had additional duties and obligations to Mr. Varner under 42 C.F.R. 483.25. Specifically, among others, "Each resident shall receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care."

17. The respondent had still further duties and obligations to Mr. Varner under 42 C.F.R. 483.75. Specifically, among others, "A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident."

18. The respondent failed in its duties and obligations under both 42 C.F.R. 483.25 and 483.75, as evidenced by Mr. Varner's untimely death and further, as found by as found by the State Survey Agency of the Centers for Medicare & Medicaid Services and reported on form CMS-2567 (Statement of Deficiencies), attached hereto as Exhibit "A". Specifically:

The facility failed to ensure necessary care and services were provided to attain or maintain the highest practicable physical well-being for (Resident #5)[Mr. Varner]. The facility failed to ensure to immediately assess a resident's condition for a reported change in mental and physical status for 1 of 1 (Resident #5)[Mr. Varner] case mix resident who had a change in condition. The failed practice resulted in Immediate Jeopardy which caused or could have caused serious harm, injury or death to Resident #5 who had a change of condition that was reported to the charge nurse who failed to immediately assess the resident condition and had the potential to affect 50 residents who had a change of condition since 1/1/13 according to a list received from the Administrator on 2/8/13. The facility was notified of the Immediate Jeopardy on 2/8/13 at 2:30 p.m.

19. Based on the alleged facts and, perhaps more persuasively, the investigation and findings of the respondent's own supervisory body, the respondent has clearly breached its duty of care owed to Mr. Varner and should be found by this Commission to be negligent.

IV. DAMAGES

20. At the time of his death, Mr. Varner was eighty-six (86) years old and enjoyed retirement earnings from social security in the approximate amount of \$23,200 annually, and pension/annuity payments in the approximate amount of \$11,000 annually for a total annual income of approximately \$34,400.

21. As a result of the negligence of the respondent, Mr. Varner incurred a complete loss of future earnings and earnings capacity.

22. Mr. Varner had a remaining life expectancy of five point eight (5.8) years pursuant to A.C.A. §18-2-105, all of which would have provided Mr. Varner with the income set forth above.

23. Mr. Varner left the following beneficiaries surviving him pursuant to A.C.A. §16-

62-102:

- a. Dolores J. Varner, decedent's wife;
- b. Mark Preston Varner, decedent's son;
- c. Mary Denise Wallin, decedent's daughter; and,
- d. Laura Ann Bailey, decedent's daughter.

24. Mr. Varner's family lost all benefit of his contributions to his family and his beneficiaries are entitled to recover for the following damages, all of which were proximately caused by the negligence of the respondent:

- a. Pecuniary injuries sustained because of the loss of contributions of Mr. Varner's future support, love, care, comfort, affection, society presence, companionship and protection all in an amount greater than the statutory minimum required for diversity jurisdiction in federal court;
- b. Mental anguish suffered by them because of the untimely and horrific manner in which Mr. Varner died, in an amount greater than the statutory minimum required for diversity jurisdiction in federal court;
- c. Funeral and burial expenses of \$7,061.85 out of pocket costs after payment of the sum of \$1,944.00 from Mr. Varner's Veteran's Administration death benefit (total funeral and burial expense \$9,005.85);
- d. Conscious pain and suffering of Mr. Varner prior to his death in an amount greater than the statutory minimum required for diversity jurisdiction in federal court.

25. The Estate of William Dale Varner respectfully requests the Arkansas State Claims Commission to acknowledge negligence on the part of the Arkansas Veteran's

Administration d/b/a/ Arkansas Veteran's Home and Fayetteville Veteran's Home and rightfully compensate Mr. Varner's family for funeral expenses, as well as damages incurred for Mr. Varner's loss of life and compensate his wife and children for their loss of Mr. Varner's services and companionship in the amount of Two Million One Hundred Seventy Five Thousand Dollars (\$2,175,000.00).

26. The Estate of William Dale Varner asks that this matter be considered by the Arkansas State Claims Commission and that a hearing be set, if necessary, to make a determination. Counsel for the Estate is available to the Commission to answer whatever questions the Commission may have or to provide any further documentation.

WHEREFORE, the claimant, as personal representative of the Estate of William Dale Varner, prays for a judgment against the respondent, Arkansas Veteran's Administration d/b/a/ Arkansas Veteran's Home and Fayetteville Veteran's Home, for personal injuries and wrongful death, compensatory damages, costs, and for any and all other relief to which the Estate may be entitled.

Respectfully Submitted
this 12th day of January, 2015

Dolores J. Varner, As Personal
Representative of the Estate of
William Dale Varner

BY: Kathryn E. Platt
**KATHRYN E. PLATT and
W. BLAIR BRADY
Brady & Platt, P.L.C.
2792 E. Millennium**

**P.O. Box 9298
Fayetteville, AR 72703-0021
(479) 443-3334
Supreme Court Nos. 95177/98029**

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IN THE ARKANSAS STATE CLAIMS COMMISSION

**DOLORES J. VARNER, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WILLIAM DALE VARNER**

CLAIMANT

v.

No. 15-0522-CC

**ARKANSAS DEPARTMENT OF
VETERAN AFFAIRS, d/b/a ARKANSAS
VETERAN'S HOME AND
FAYETTEVILLE VETERAN'S HOME**

RESPONDENT

ANSWER TO COMPLAINT

Comes now the respondent, the Arkansas Department of Veteran Affairs, and for its answer to the complaint filed by claimant, Dolores Varner, individually and as personal representative of the Estate of William Dale Varner, states:

1. Respondent admits that claimant purportedly brings a wrongful death action. Respondent denies the remaining allegations contained in paragraph 1 of claimant's complaint. Respondent further denies that it committed negligence, medical malpractice, or failed to provide proper care and treatment to Mr. Varner. Respondent denies that claimant is entitled to the relief requested or damages sought.

2. Respondent admits that claimant purportedly brings this action to ensure that respondent enacts "standards of care and medical treatment for its Arkansas patients." Respondent denies the remaining allegations contained in paragraph 2 of claimant's complaint. Respondent further denies that it committed negligence, medical malpractice, failed to provide proper care and treatment to its Arkansas patients. Respondent denies that claimant is entitled to the relief requested or damages sought.

3. Respondent denies the allegations contained in paragraph 3 of claimant's complaint.

4. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 4 of claimant's complaint, and therefore, denies the same.

5. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 5 of claimant's complaint, and therefore, denies the same.

6. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 6 of claimant's complaint, and therefore, denies the same.

7. Respondent admits that it is a state agency. Respondent states that Arkansas law speaks for itself. Respondent denies any allegations inconsistent with Arkansas law. Respondent denies the remaining allegations contained in paragraph 7 of claimant's complaint.

8. Respondent admits that the Arkansas Veterans Home at Fayetteville is a skilled nursing facility. Respondent denies the remaining allegations contained in paragraph 8 of claimant's complaint.

9. Respondent admits that the Arkansas Veterans Home at Fayetteville is a skilled nursing facility. Respondent denies the remaining allegations contained in paragraph 9 of claimant's complaint.

10. Respondent asserts that the facility chart of William Dale Varner, if any, speaks for itself as to his period of residency and date of death. Respondent denies the remaining allegations contained in paragraph 10 of claimant's complaint.

11. Respondent asserts that the facility chart of William Dale Varner, if any, speaks for itself as to his period of residency. Respondent denies anything inconsistent with said chart. Respondent also asserts that William Dale Varner's facility chart and medical records speak for themselves as to his condition. Respondent denies any allegations inconsistent with his facility

chart and medical records. Respondent denies the remaining the allegations contained in paragraph 11 of claimant's complaint.

12. Respondent denies the allegations contained in paragraph 12 of claimant's complaint including subparagraphs a, b, c, d, e, f, g, h, I, and j.

13. Respondent admits that the Arkansas Veterans Home at Fayetteville is a skilled nursing facility. Respondent admits that some of its residents are Medicare recipients. Respondent denies the remaining allegations contained in paragraph 13 of claimant's complaint.

14. Respondent admits that the Social Security Act and the Code of Federal Regulations speak for themselves. Respondent denies any allegations inconsistent with the Social Security Act or the Code of Federal Regulations. Respondent admits that it owed certain duties to its residents. Respondent denies that those duties have been accurately set forth. Respondent further denies that the Social Security Act or the Code of Federal Regulations establish the standard of care or duties owed respondent to its residents. Respondent further denies the remaining allegations contained in paragraph 14 of the complaint.

15. Respondent admits that it owed certain duties to its residents. Respondent denies that those duties have been accurately set forth. Respondent further denies that the Social Security Act or the Code of Federal Regulations establish the standard of care or duties owed by respondent to its residents. Respondent further admits that Exhibit "A" speaks for itself. Respondent denies any allegations inconsistent with Exhibit "A." Respondent denies that Exhibit "A" is evidence of any alleged failure of its duties or obligations or of any wrongdoing. Respondent denies the remaining allegations contained in paragraph 15 of claimant's complaint.

16. Respondent admits that the Code of Federal Regulations speak for itself. Respondent denies any allegations inconsistent with the Code of Federal Regulations.

Respondent admits that it owed certain duties to its residents. Respondent denies that those duties have been accurately set forth. Respondent further denies that the Code of Federal Regulations establish the standard of care or duties owed by respondent to its residents. Respondent further denies the remaining allegations contained in paragraph 16 of the complaint.

17. Respondent admits that the Code of Federal Regulations speak for itself. Respondent denies any allegations inconsistent with the Code of Federal Regulations.

~~Respondent admits that it owed certain duties to its residents. Respondent denies that those duties have been accurately set forth. Respondent further denies that the Code of Federal Regulations establish the standard of care or duties owed by respondent to its residents. Respondent further denies the remaining allegations contained in paragraph 17 of the complaint.~~

18. Respondent admits that it owed certain duties to its residents. Respondent denies that those duties have been accurately set forth. Respondent further denies that the Code of Federal Regulations establish the standard of care or duties owed by respondent to its residents. Respondent further admits that Exhibit "A" speaks for itself. Respondent denies any allegations inconsistent with Exhibit "A." Respondent denies that Exhibit "A" is evidence of any alleged failure of its duties or obligations or of any wrongdoing. Respondent denies the remaining allegations contained in paragraph 18 of claimant's complaint.

19. Respondent denies the allegations contained in paragraph 19 of claimant's complaint.

20. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 20 of claimant's complaint, and therefore, denies the same.

21. Respondent denies the allegations contained in paragraph 21 of claimant's complaint.

22. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 22 of claimant's complaint, and therefore, denies the same.

23. Respondent is without sufficient knowledge to admit or deny the allegations in paragraph 23 of claimant's complaint including subparts a, b, c, and d, and therefore, denies the same.

24. Respondent denies the allegations contained in paragraph 24 of claimant's complaint including subparts a, b, c, and d.

25. Respondent denies the allegations contained in paragraph 25 of claimant's complaint or that claimant is entitled to the relief sought or damages requested.

26. Respondent admits that claimant seeks a hearing before the Arkansas State Claims Commission in paragraph 26 of claimant's complaint. Respondent states that it should be able to seek discovery before any scheduled hearing. Respondent denies the remaining allegations contained in paragraph 26 of claimant's complaint.

27. Respondent denies the allegations in the "wherefore" clause of claimant's complaint. Respondent further denies that claimant is entitled to the relief sought or damages requested in the "wherefore" clause of claimant's complaint.

28. Respondent denies any allegations that were not specifically admitted herein.

29. Respondent reserves the right to supplement or amend this answer and plead further as discovery is conducted.

Affirmative Defenses

30. Pleading affirmatively, respondent states that claimant's complaint fails to state a claim for which relief can be granted pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure. Accordingly, claimant's complaint should be dismissed.

31. Pleading affirmatively, respondent states that the acts, omissions, and injuries alleged may be the fault of third parties not under the control of this respondent and requests an apportionment of fault as permitted by Arkansas law against claimant, William Dale Varner, and any third parties at fault which discovery might reveal.

32. Pleading affirmatively, respondent states that any injuries to William Dale Varner or damages to claimant were the natural consequences of William Dale Varner's medical conditions.

33. Pleading affirmatively, respondent states that claimant's claim is barred by the applicable statute of limitations.

34. Pleading affirmatively, respondent states that any damages that claimant is alleging were the result of an efficient, intervening, or supervening cause, such that claimant may not recover against respondent herein.

35. Pleading affirmatively, respondent states that claimant should be permitted to recover only those medical expenses actually paid by claimant if the Commission determines that respondent is liable for claimant's injury. There is no evidence that claimant has actually paid any medical expenses. Claimant has not provided copies of invoices or receipts for any medical bills actually paid.

36. Pleading affirmatively, respondent states that claimant has failed to exhaust her remedies against insurers as required by Ark. Code Ann. § 19-10-302. Accordingly, this claim should be dismissed or held in abeyance until such time that claimant can demonstrate that she has exhausted all remedies available to her. Claimant has failed to provide an affidavit witnessed by the insurer, stating that she has exhausted all remedies against it, along with the total amount of insurance benefits paid.

37. Pleading affirmatively, respondent states that claimant has failed to mitigate her damages and/or losses, and, as such, any claim of claimant should be reduced by virtue of her failure to mitigate.

38. Pleading affirmatively, respondent pleads and claims any and all benefits, as applicable, derived from Act 649 of the Acts of Arkansas, which became effective on March 25, 2003.

~~39. Pleading affirmatively, respondent states all of claimant's claims are subsumed under the provisions of the Arkansas Medical Malpractice Act, Ark. Code Ann. § 16-114-201, et. seq.~~

40. Pleading affirmatively, claimant's claim may be subject to an arbitration agreement. Respondent reserves the right to file an amended answer raising arbitration as a defense in this matter and seek to compel arbitration in accordance with any arbitration agreement.

41. Respondent reserves the right to plead further and reserves objections on the basis of lack of subject matter jurisdiction, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to join a party under Rule 19, and pendency of another action between the same parties arising out of the same transaction or occurrence.

42. Pleading affirmatively, respondent states that at the time and place alleged in the complaint, plaintiff and/or William Dale Varner was guilty of negligence which proximately caused or proximately contributed to any injuries or damages they may have sustained, and that, therefore, any award to which claimant may be entitled should be reduced accordingly, pursuant to the Doctrine of Comparative Negligence.

43. The following are the applicable codes for respondent: (a) Business Area 0385; (b) Fund NVA0000; (c) Cost Center Group 311501 and (d) Funds Center 2QD.

WHEREFORE, respondent, the Arkansas Department of Veteran Affairs, and for its answer to the complaint filed by claimant, Dolores Varner, individually and as personal representative of the Estate of William Dale Varner, prays that claimant's complaint be dismissed and for all other just and appropriate relief.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General of Arkansas

By: Mindy D. Pipkin
Mindy D. Pipkin, Ark. Bar No. 2004067
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center St., Suite 500
Little Rock, AR 72201
Phone: (501) 682-1314
Fax: (501) 682-2591
Email: mindy.pipkin@arkansasag.gov

CERTIFICATE OF SERVICE

I, Mindy D. Pipkin, Assistant Attorney General, do hereby certify that on this 11th day of February, 2015, I have mailed a copy of the foregoing, via First Class U.S. Mail and fax, to the following:

Mr. W. Blair Brady
Ms. Kathryn E. Platt
Brady & Platt, P.L.C.
2792 E. Millennium
Fayetteville, Arkansas 72703

Mindy D. Pipkin
Mindy D. Pipkin

MAR 11 2016

SETTLEMENT AGREEMENT AND RELEASE

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WHEREAS, an action is pending in the Arkansas State Claims Commission styled as *Dolores J. Varner, as Personal Representative of the Estate of William Dale Varner v. Arkansas Department of Veteran Affairs, d/b/a Arkansas Veteran's Home and Fayetteville Veteran's Home*, Claim No. 15-0522-CC (hereinafter referred to as the "Action"); and

WHEREAS, the respondent in the Action, the Arkansas Department of Veteran Affairs (referred to as "respondent" unless the context requires otherwise), denies that it, or any officer, employee, or agent, have engaged in any wrongful, tortious or unlawful conduct of any kind; and

WHEREAS, the claimant in this action, Dolores J. Varner, as Personal Representative of the Estate of William Dale Varner and on behalf of any statutory or wrongful death beneficiaries, (referred to as "claimant" unless the context requires otherwise), and the respondent desire to compromise and settle the Action to avoid the costs and uncertainties of continued litigation; and

NOW, THEREFORE, the claimant and the respondent agree to the following terms as full and final satisfaction of any and all claims, including any and all claims for costs and attorneys' fees, which was raised by claimant in the Action or could have been raised by claimant in the Action or in any other forum.

1. ACTION TO BE TAKEN BY RESPONDENT. Following entry of an Order dismissing the Action with prejudice, the respondent will pay a total of \$250,000.00 to claimant, as Personal Representative of the Estate and on behalf of all the wrongful death beneficiaries, and her attorney.

2. ACTION TO BE TAKEN BY CLAIMANT. The claimant will move to dismiss the Action with prejudice.

3. COMPLETE RELEASE AND WAIVER. The claimant waives, releases, relinquishes and forever discharges the respondent from all claims, liens, medical expenses, or causes of action, known or unknown, arising out of William Dale Varner's residency at the Arkansas Veterans Home at Fayetteville or the matters stated in the complaint, and for damages, attorneys' fees, costs or recovery of any type against the respondent including any officers, officials, employees and agents of the respondent in their official and individual capacities. Claimant agrees to indemnify and hold harmless the respondent from any and all claims, demands, liens, subrogated interests, and causes of action that may exist or have been asserted or that may in the future exist or be asserted.

4. SATISFACTION OF ANY MEDICARE REIMBURSEMENT OBLIGATIONS. Claimant represents and warrants that no Medicaid payment has been made to or on behalf of William Dale Varner, deceased, and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising out of William Dale Varner's residency at the Arkansas Veterans Home at Fayetteville or arising from or related to the matters contained in the complaint. Claimant agrees to indemnify and hold harmless the respondent from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from or related to this Agreement, the payment of the Settlement Amount, any Conditional Payments made by Medicare, or any medical expenses or payments arising from or related to the Action or to any

matter that is subject to this Agreement or the release set forth herein, including but not limited to:

(a) All claims and demands for reimbursement of Conditional Payments or for damages or double damages based upon any failure to reimburse Medicare for Conditional Payments;

(b) All claims and demands for penalties based upon any failure to report, late reporting, or other noncompliance with or violation of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 that is based in whole or in part upon late, inaccurate, or inadequate information; and

(c) All Medicaid liens.

This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of respondent in connection with such claims, demands, subrogated interests, or causes of action.

5. 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, that is not set forth in this Agreement.

6. 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.

7. VOLUNTARY AGREEMENT. The claimant and respondent acknowledge that each has read this Agreement, that each 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.

8. NO RESCISSION FOR MISTAKE. The claimant and respondent acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the Action and any additionally waived and released claims to the extent each deems necessary and appropriate. The claimant and respondent 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.

9. 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 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.

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

11. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the claimant and respondent and each of their respective heirs, descendants, successors and assigns.

12. EFFECTIVE DATE. This Agreement shall not become effective until approved by the Arkansas State Claims Commission and the Arkansas General Assembly. Further, this agreement shall not become effective until approved by order of the Circuit Court of Washington County, Arkansas, in the case styled *In the Matter of the Estate of William D. Varner, deceased*, Case No. PR 2013-227-5 to execute this release of claims in favor of the respondent on behalf of claimant; the Estate of William D. Varner, deceased; and the statutory or wrongful death

beneficiaries of William D. Varner, deceased. Claimant agrees to produce a file-marked copy of the Court order to counsel for the respondent.

13. COUNTERPARTS. This Agreement may be executed in counterparts and the counterparts, taken together, will have binding effect.

CLAIMANT

By: DeLancey J. Varner

Title: Personal Rep. of Estate

Date: February 26, 2016

RESPONDENT

By: [Signature]

Title: Director, ADVA

Date: 10 Mar 16

**STATE CLAIMS COMMISSION JACKET
OPINION**

2,175,000.00

15-0522-CC

Amount of Claim \$ _____	Claim No. _____
Dolores Varner	Attorneys Blair Brady, Attorney
Claimant	Kathryn Platt, Attorney
vs.	Claimant
AR. Department of Veteran Affairs	Mindy Pipkin, Attorney
Respondent	Respondent
State of Arkansas January 14, 2015	Wrongful Death, Negligence, Failure
Date Filed _____	To Follow Procedure, Mental
	Type of Claim Anguish, Loss of Wages, Refund of
	Expenses

FINDING OF FACTS

This claim was filed for wrongful death, negligence, failure to follow procedure, mental anguish, and loss of wages and refund of expenses in the amount of \$2,175,000.00 against Arkansas Department of Veteran Affairs.

A "Negotiated Settlement Agreement" signed by the claim parties were submitted to the Claims Commission by the Respondent and Claimants' legal counsel, along with the Respondent's recommendation of payment in the amount of \$250,000.00 in full payment of this claim, in a letter or Answer received on March 11, 2016.

The Claims Commission hereby unanimously allows this claim in the amount of \$250,000.00 as recommended by the Respondent and **will include the claim in a claims bill to be submitted to the appropriate session of the General Assembly, for subsequent approval and payment.**

IT IS SO ORDERED.



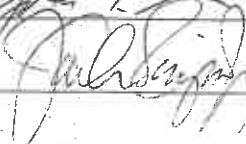
(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously allows this claim in the amount of \$250,000.00 and **will include the claim in a claims bill to be submitted to the appropriate session of the General Assembly, for subsequent approval and payment.**

Date of Hearing March 11, 2016

Date of Disposition March 11, 2016

	Chairman
	Commissioner
	Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.