

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of ArkansasArkansas
State Claims Commission
APR 10 2019

- ☐ Mr.
☒ Mrs.
☐ Ms.
☐ Miss

Marsha Frazier

Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____

Date Filed _____
(Month) (Day) (Year)

Amount of Claim \$ _____

Fund _____

COMPLAINT

Marsha Frazier

the above named Claimant, of

Marshall Frazier

County of _____

represented by

Self claim legal
(Legal Counsel, if any, for Claim)of _____, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: University of Arkansas

Amount sought: \$500,000.00

Month, day, year and place of incident or service: 8/26/17

Explanation: He was fine up into the charge nurse came in later running her shift and she didn't check and see if he had already had it about 30 to 45 minutes and the same medication was given too soon and it resulted in his death. The medication was administered too soon. I feel as though that is the cause of his heart failure.

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 matter and things set forth in the above complaint, and that he or she verily believe that they are true.

Marsha FRAZIER
 (Print Claimant/Representative Name)

Marsha Frazier
 (Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Pine Bluff Ar

(SEAL)

BRENDA MOSS
 NOTARY PUBLIC-STATE OF ARKANSAS
 JEFFERSON COUNTY
 My Commission Expires 07-31-2023
 Commission # 12394381

on this 8 day of April 2019
 (Date) (Month) (Year)

Brenda Moss
 (Notary Public)

SF1- R7:99

My Commission Expires:

07-31-2023

(Month)

(Day)

(Year)

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

Arkansas
State Claims Commission
APR 10 2019

SECTION I
CLAIMANT

Marsha Frazier

ADDRESS

CITY & STATE

ZIP CODE

DATE OF INCIDENT: 8/26/17 19 12:30AM TIME 1:00am

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

Marshall Frazier was fine But the charge nurse was running late for her shift and just administered his medication to soon

(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 (☒)

If yes, what is the deductible? \$ _____

If yes, is medical insurance:

- A. Job-based Yes () No ()
B. Uninsured Motorist Yes () No ()
C. Private Pay Yes () No ()

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

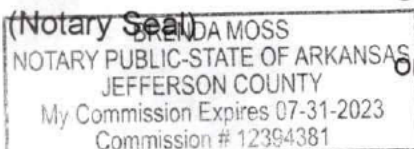
The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Marsha Frazier
Signature of Claimant

Sworn to and subscribed before me at

Pine Bluff Ar

City & State



on this 8 day of April 2019
day month year

My Commission Expires 07-31-2023

DA Moss
Signature of Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**MARSHA FRAZIER, AS
ADMINISTRATRIX OF THE
ESTATE OF MARSHALL
FRAZIER JR.**

CLAIMANT

V.

CLAIM NO. 191008

**UNIVERSITY OF ARKANSAS FOR
MEDICAL SCIENCES**

RESPONDENT

ORDER

The above-referenced claim came before the Arkansas State Claims Commission (the “Claims Commission”) on May 12, 2022, for a hearing on pending motions. Ms. Frazier appeared in her *pro se*¹ capacity, and Sherri L. Robinson appeared on behalf of the University of Arkansas for Medical Sciences (UAMS or the “Respondent”). At the hearing, the Claims Commission considered the following the motions to dismiss filed by UAMS, as well as UAMS’ motion to stay discovery.

Procedural History

1. On April 10, 2019, Ms. Frazier filed an individual claim (styled *Marsha Frazier v. UAMS*) related to the death of her husband, Marshall Frazier Jr. Ms. Frazier filed the claim *pro se*, and she alleged \$500,000.00 in damages. Ms. Frazier alleged the following in her complaint:

He was fine up into [sic] the charge nurse came in later running her shift and she didn’t to [sic] check and see if he had already had it about 30 to 45 minutes and the same medication was given to[o] soon and it resulted in his death. The medication was administered to[o] soon. I feel as though that is the cause of his heart failure.

¹ “*Pro se*” is a Latin phrase that can be translated as “in his own behalf.” This phrase is used to describe a claimant who files a claim without being represented by an attorney.

On another page, Ms. Frazier stated that “Marshall Frazier was fine but the charge nurse was running late for her shift and just administered his medication to[o] soon.” In a supporting affidavit, Ms. Frazier stated that “I am the Claimant of this Complaint to this Claims commission in the above caption[ed] action herein.”

2. Respondent moved to dismiss, arguing that Ms. Frazier does not have standing to bring a lawsuit on behalf of her now deceased husband.

3. On October 1, 2019, Ms. Frazier filed a pleading titled “Notification of Administration and Remove Claim Out Abeyance Continue with the Wrongful Death Settlement” and attached a petition and other documents filed in Jefferson County Circuit Court. Ms. Frazier also moved to amend her complaint to increase the amount of damages from \$500,000.00 to \$1,500,000.00, stating that the original amount was a “typo.”

4. By order dated October 9, 2019, the claim was re-captioned *Marsha Frazier, as Administratrix of the Estate of Marshall Frazier Jr. v. UAMS*. In that same order, the Claims Commission granted Ms. Frazier’s request to modify the amount of her claimed damages.

5. The parties then conducted some discovery.

6. UAMS subsequently filed its second motion to dismiss, arguing that Ms. Frazier must exhaust her claims against the UAMS physicians and that Ms. Frazier failed to do so prior to the expiration of the statute of limitations on August 26, 2019.²

7. Ms. Frazier responded, arguing that wrongful death actions are subject to a three-year statute of limitation and that claims related to “a foreign object in the body” must be filed

² Ms. Frazier’s complaint, as well as the medical records attached to her complaint, indicate that Mr. Frazier passed away on August 26, 2017.

within one year from the date of discovery. Ms. Frazier further argued that Mr. Frazier's appendix was missing at the time of his autopsy, such that the three-year statute of limitation would apply.

8. UAMS then filed a motion to stay discovery.

9. Ms. Frazier opposed the motion to stay discovery and included in her response additional argument that the three-year statute of limitation should apply.

10. On May 18, 2020, the Claims Commission sent a scheduling order to the parties, directing Ms. Frazier to identify all witnesses, including an expert witness, by September 30, 2020.³ That scheduling order also directed the parties to have all discovery completed, including depositions, by December 30, 2020. Ms. Frazier confirmed receipt of the scheduling order by correspondence filed on June 25, 2020.

11. On September 1, 2020, Ms. Frazier filed documents related to a lawsuit that she filed in Pulaski County Circuit Court against UAMS physicians related to the death of her husband (the "Physician Lawsuit").⁴ The Physician Lawsuit was dismissed with prejudice by the Pulaski County Circuit Court on September 8, 2021. In the order, Circuit Judge Herbert Wright specifically found, *inter alia*, that (1) Ms. Frazier's lawsuit was barred by the applicable statute of limitation contained in Ark. Code Ann. § 16-114-203; and (2) Ms. Frazier's *pro se* filing of the lawsuit on behalf of the Estate of Marshall Frazier Jr. constitutes the unauthorized practice of law, such that her complaint is a nullity.

12. On January 4, 2020, Ms. Frazier voluntarily dismissed her appeal of the order dismissing the Physician Lawsuit.⁵

³ In that same scheduling order, UAMS was directed to identify a rebuttal expert witness by October 30, 2020.

⁴ *Marsha G. Frazier – Administrator of Estate of Marshall Frazier Jr. v. Dr. Benjamin Tharian et al.*, Pulaski County Circuit Court Case No. 60CV-20-4734.

Argument at Hearing

13. At the May 12, 2022, Claims Commission hearing on the pending motions, UAMS noted that the second motion to dismiss is actually a motion for summary judgment. UAMS argued that it is entitled to summary judgment because Ms. Frazier did not exhaust her remedies against the physicians involved in her husband's treatment because she did not timely file the lawsuit.

14. Ms. Frazier argued that when she filed her claim with the Claims Commission in April 2019, the statute of limitation had not expired. She further argued that the statute of limitation is tolled; that UAMS is liable under the theory of *respondeat superior*; that UAMS removed her husband's appendix; that her husband's death was preventable; and that her husband's gallbladder should have been removed.

15. The chair commissioner noted his concerns with Ms. Frazier's standing to file the original claim in April 2019, as Ms. Frazier filed the complaint individually and without the other statutory heirs at law.⁶

16. The chair commissioner also noted his concerns with Ms. Frazier's *pro se* filing as administratrix of the Estate of Marshall Frazier, citing to *Henson v. Craddock*, 2020 Ark. 24, 593 S.W.3d 10. Ms. Frazier disagreed, stating that while she had to be represented by an attorney in circuit court, she is not required to have an attorney before the Claims Commission because it is an administrative hearing.

⁵ In the filing voluntarily dismissing her appeal, Ms. Frazier stated that her unsuccessful attempts to retain an attorney "is why [the laws regarding the] unauthorized practice [of law] should be unconstitutional."

⁶ In Ms. Frazier's October 1, 2019, Claims Commission filing, she included a petition filed with the Jefferson County Circuit Court, which includes the names of three daughters (Luciana A. Frazier, Dena M. Perry, and Sheena C. Frazier) and one son (Emmanuel D. Frazier).

17. Additionally, the chair commissioner noted that Ms. Frazier had not yet identified an expert witness as required by the Claims Commission's May 18, 2020, scheduling order. Ms. Frazier disagreed, stating that she consulted with her own GI doctor and that it has been found unconstitutional to require an expert witness.

18. Ms. Frazier argued that she was bringing her claim *sui juris*⁷; that her husband's gallbladder should have been removed; that UAMS allowed her husband's health to deteriorate; and that her husband's appendix was gone by the time of his autopsy. Ms. Frazier also disagreed that the statute of limitation had expired.

Ms. Frazier's Standing to Bring Original Claim

19. Ark. Code Ann. § 16-62-102(b) defines how a wrongful death action may be pursued:

Every action shall be brought by and in the name of the personal representative of the deceased person. If there is no personal representative, then the action shall be brought by the heirs at law of the deceased person.

The heirs at law are defined in the same statute as the surviving spouse, children, parents, and siblings of the deceased, as well as anyone "standing in loco parentis to the deceased" and anyone "to whom the deceased stood in loco parentis at any time." *See id.*

20. The Arkansas Supreme Court clarified in *Ramirez v. White County Circuit Court*, 343 Ark. 372, 38 S.W.3d 298 (2001), that, in the absence of a personal representative, a wrongful death action must be brought by all heirs at law and that an individual heir at law does not have standing to bring a wrongful death action unless that individual is the only heir at law.⁸

⁷ "*Sui juris*" is a Latin phrase that can be translated as "having full legal rights or capacity." This phrase is used to describe individuals who have reached the age of majority and are not under the guardianship of another. *See generally, Smith v. Walker*, 187 Ark. 161, 58 S.W.2d 946 (1933).

⁸ Quoting *Brewer v. Lacefield*, 301 Ark. 358, 784 S.W.2d 156 (1990), the Arkansas Supreme Court in *Ramirez* held that "[t]he wrongful death code provisions do not create an individual right in any beneficiary to bring suit."

21. In *St. Paul Mercury Ins. Co. v. Circuit Court of Craighead County, Western Div.*, 348 Ark. 197, 73 S.W.3d 584 (2002), the Arkansas Supreme Court found that where plaintiffs were without standing to bring a lawsuit, the complaint was rendered a nullity.

22. The Arkansas Supreme Court reiterated the *Ramirez* and *St. Paul Mercury* holdings in *Brewer v. Poole*, 362 Ark. 1, 207 at *14–15, S.W.3d 458, 466 (2005), succinctly stating, in pertinent part, that:

[Arkansas Code Annotated] Section 16–62–102(b) requires that every cause of action for wrongful death shall be brought by and in the name of the personal representative, or, if there is no personal representative, then the action shall be brought by the heirs at law of the deceased person. The original complaint in this case failed to include all the heirs at law as parties to the suit. Therefore, the original complaint was a nullity.

23. The Claims Commission finds that Ms. Frazier’s April 2019 claim filing was not brought by a personal representative or by all of the heirs at law. As one of several heirs at law, Ms. Frazier did not have standing to bring this claim, such that the Claims Commission must find that Ms. Frazier’s April 2019 claim filing is a nullity. This means that the April 2019 claim filing effectively “never existed.” *Davenport v. Lee*, 348 Ark. 148, 160, 72 S.W.3d 85, 94 (2002).

Ms. Frazier’s Standing to Bring a *Pro Se* Claim as Administratrix

24. In *Henson v. Craddock*, 2020 Ark. 24, 593 S.W.3d 10, the Arkansas Supreme Court stated that “a nonlawyer estate administrator filing a pro se complaint on behalf of an estate in a wrongful death action constitutes the unauthorized practice of law,”⁹ meaning that the *pro se* complaint is rendered a nullity.

25. While Ms. Frazier argued that she is entitled to pursue a *pro se* complaint on behalf of an estate at the Claims Commission, she is incorrect. If a claim would be subject to dismissal in circuit court for reasons other than sovereign immunity, the Arkansas General Assembly has

⁹ Citing to *Davenport v. Lee*, 348 Ark. 148, 72 S.W.3d 85 (2002).

prohibited the Claims Commission from awarding damages to a claimant.¹⁰ In this claim, the Claims Commission knows that a *pro se* wrongful death complaint on behalf of Mr. Frazier's estate would be subject to dismissal in circuit court because it already has been dismissed by the Pulaski County Circuit Court based, in part, upon Ms. Frazier's unauthorized practice of law.

26. While Ms. Frazier is correct that other *pro se* claimants appeared before the Claims Commission on May 12, 2022, Ms. Frazier is not a *pro se* claimant pursuing an individual claim—she is an administratrix of her husband's estate bringing a wrongful death claim on behalf of his estate, and Arkansas law is clear that she is not permitted to bring such a claim *pro se*.

27. As such, to the extent that Ms. Frazier's October 1, 2019, filing titled "Notification of Administration and Remove Claim Out Abeyance Continue with the Wrongful Death Settlement" could be construed as a wrongful death complaint on behalf of her husband's estate, the Claims Commission finds that such complaint is a nullity because it was brought *pro se* by Ms. Frazier as administratrix. To the extent that this filing could be construed as an amended complaint or a correction of the original complaint, the Arkansas Supreme Court held that where an original complaint was a nullity, "an amended complaint cannot relate back to something that never existed, nor can a nonexistent complaint be corrected." *Davenport*, 348 Ark. at 160, 72 S.W.3d at 94.

28. Moreover, even if the October 1, 2019, filing had been filed by an attorney and satisfied all pleading requirements, it would be subject to dismissal based upon expiration of the statute of limitations because the nullified nature of the original claim.¹¹

¹⁰ Ark. Code Ann. § 19-10-204(c):

The commission shall not make an award for a claim or action that, as a matter of law, would be dismissed from a court of law for reasons other than sovereign immunity.

¹¹ Arkansas law is well settled that the "Medical Malpractice Act applies to all causes of action for medical injury occurring after April 2, 1979, including wrongful-death and survival actions arising from

Scheduling Order and Expert Witness Requirement

29. Even if Ms. Frazier’s original claim filing and her filings as the *pro se* administratrix of Mr. Frazier’s estate were proper, the Claims Commission finds that an additional basis for dismissal exists based upon Ms. Frazier failure to identify an expert witness within the time specified by the Claims Commission. Ms. Frazier’s argument regarding the unconstitutionality of the expert testimony requirement is simply wrong.¹² Ms. Frazier may be thinking of the Arkansas Supreme Court’s decision in *Summerville v. Thrower*, 369 Ark. 231, 253 S.W.3d 415 (2007), in which the Arkansas Supreme Court held unconstitutional the portion of Ark. Code Ann. § 16-114-209(b) mandating dismissal of a medical malpractice lawsuit if the plaintiff failed to file an expert affidavit within 30 days of filing the complaint. However, in *Summerville*, the Arkansas Supreme Court also affirmed the requirement that expert testimony be provided, stating that “[t]his court has upheld that requirement for expert testimony regarding the standard of care. . . .” *Id.* at 238, 253 S.W.3d at 420. As such, expert testimony is required to

the death of a patient,” such that the two-year statute of limitation applies. *Davis v. Parham*, 362 Ark. 352, 208 S.W.3d 162 (2005). The Arkansas Supreme Court has reviewed the inconsistency between the two-year statute of limitation in the Medical Malpractice Act and the three-year statute of limitation in the Wrongful Death Act and found that the Medical Malpractice Act’s statute of limitation controls “where death ensues from medical injuries.” *See id.* at 361, 208 S.W.3d at 168 (citing to *Looney v. Bolt*, 330 Ark. 530, 955 S.W.2d 509 (1997); *Scarlett v. Rose Care, Inc.*, 328 Ark. 672, 944 S.W.2d 545 (1997); *Morrison v. Jennings*, 328 Ark. 278, 943 S.W.2d 559 (1997); *Pastchol v. St. Paul Fire & Marine Ins. Co.*, 326 Ark. 140, 929 S.W.2d 713 (1996); and *Hertlein v. St. Paul Fire & Marine Ins. Co.*, 323 Ark. 283, 914 S.W.2d 303 (1996).

¹² Arkansas Court of Appeals explained the expert testimony requirement in *Johnson v. Schafer*, 2018 Ark. App. 630, 565 S.W.3d 144:

...unless the asserted negligence could be comprehended by a jury as a matter of common knowledge, a plaintiff has the additional burden of providing three propositions by expert testimony: the applicable standard of care; the medical provider’s failure to act in accordance with that standard; and that the failure was the proximate cause of the plaintiff’s injuries.

(emphasis added).

ultimately prevail at trial, even though an expert affidavit does not have to be filed contemporaneously with the complaint.

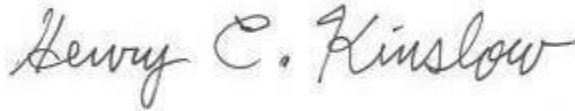
Conclusion

30. The Claims Commission finds that Ms. Frazier's April 2019 claim filing and her *pro se* filings as administratrix of the Estate of Marshall Frazier Jr. to be nullities. As it has now been nearly five years since Mr. Frazier's death, the Claims Commission finds that the statute of limitations has long expired and that the claim must be dismissed with prejudice.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: May 18, 2022

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).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**MARSHA FRAZIER, AS
ADMINISTRATRIX OF THE
ESTATE OF MARSHALL
FRAZIER JR.**

CLAIMANT

V.

CLAIM NO. 191008

**UNIVERSITY OF ARKANSAS FOR
MEDICAL SCIENCES**

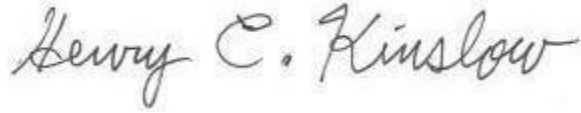
RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a notice of appeal filed in the claim of Marsha Frazier, as Administratrix of the Estate of Marshall Frazier Jr. (the “Claimant”) against the University of Arkansas for Medical Sciences (the “Respondent”). This notice of appeal was filed by the “Heirs at Law of Marshall Frazier Jr.” (who were not parties to the claim) and was filed more than 40 days after the Claims Commission’s May 18, 2022, dismissal of Claimant’s claim with prejudice.

Despite these issues, the Claims Commission will transmit this claim file to the Arkansas General Assembly, as Ark. Code Ann. § 19-10-211 does not permit the Claims Commission to reject an appeal.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: July 12, 2022

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).
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