EXHIBIT B.1

269 pages

Arkansas
State Claims Commission

DEC 07 2018

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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

Claim # 15-0482-CC

Do Not Write in These Spaces

Claim No. _____

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

Amount of Claim $ _____

Fund _____

☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss
Charles Coleman (Deceased) Nelda Coleman, Claimant

vs.

State of Arkansas, Respondent
AR claim commission
UAMS Medical Hospital AL Et

COMPLAINT

Charles, Nelda Coleman (Name) the above named Claimant, of [redacted] represented by Pro/se (Legal Counsel, if any, for Claim)

[redacted] (State) (Zip Code) (Daytime Phone No.)

of _____ (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.), says:

State agency involved: University Hospital (UAMS) DR Harman Tabler DR. Betzold Amount sought: 3 million

Month, day, year and place of incident or service: _____

Explanation: This claim was filed in the Arkansas State claim commission December 22, 2014, MR. Charles Coleman was sent HOME bleeding from His Heart march 23, 2012 MR Coleman called Wife 30 min After DR Richard Betzold Discharged MR. Charles Coleman Home, DR. Betzold did not Have A Licence to Discharge MR. Coleman Home did not Have A Upper Level Sign Off on the Discharge A Upper Level Doctor Signs off on Students, DR. Betzold did X-Ray on MR. Coleman before Discharge and SEEN the BLEED, upon Return to the Hospital 30 min After Discharge the E.R. Doctor did A X-Ray of MR. Colemans Chest and SEEN the same BLEED

The Status of Limitation was not out on the claim as University Hospital Attorney stated, we were barred from the Hearings that were held.

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? YES (Yes or No); when? Feb (Month) 25 (Day) 2014 (Year); to whom? Pulaski County Circuit Court, AL Et (Department): and that the following action was taken thereon: _____

and that $ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? _____; 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.

Nelda Coleman
(Print Claimant/Representative Name)

Nelda Coleman
(Signature of Claimant/Representative)

DENNIS N. WHITE
NOTARY PUBLIC
MY COMMISSION # 12689795
EXPIRES: May 24, 2025
Saline County

(SEAL)

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

on this 6th (Date) day of December (Month), 2018 (Year)

Dennis N White
(Notary Public)

My Commission Expires: May 24, 2025
(Month) (Day) (Year)

SF1-R7/99

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

NELDA COLEMAN **CLAIMANT**

V. **CLAIM NO. 190654**

UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES; ARKANSAS STATE CLAIMS COMMISSION **RESPONDENTS**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") are motions filed by the University of Arkansas for Medical Sciences ("UAMS") and the Claims Commission to dismiss the claim of Nelda Coleman (the "Claimant"). Based upon a review of the motions and the law of Arkansas, the Claims Commission hereby finds as follows:

1. This claim is intertwined with a previous claim filed by Claimant and her now-deceased husband, Charles Coleman, styled as *Charles Coleman v. UAMS*, Claim No. 15-0482-CC.[1]

2. Claim No. 15-0482-CC was filed by Claimant and Mr. Coleman against UAMS, alleging medical negligence related to the treatment that Mr. Coleman received in March 2012. The Claims Commission granted UAMS' motion to dismiss, as well as Claimant's subsequent motion for reconsideration. On appeal, the Arkansas General Assembly upheld the dismissal.

3. Claimant filed the instant claim on December 7, 2018, against UAMS and the Claims Commission. At the top of the complaint form, she wrote "claim # 15-0482-CC," explicitly referencing the previous claim. In Claimant's supporting documentation, she stated that she would

[1] The precise date of Mr. Coleman's death is unknown, although a January 21, 2015, filing appears to include his signature.

like Claim No. 15-0482-CC reopened. In the body of her complaint form, Claimant stated that "[t]he statu[t]e of limitation[s] was not out on the claim as university hospital attorney stated, we were barred from the hearings that were held."

UAMS' Motion to Dismiss

4. UAMS filed a motion to dismiss, arguing that dismissal is appropriate under the doctrine of *res judicata*, given that Claimant has unsuccessfully pursued her claim through or sought review from the Claims Commission, the Arkansas General Assembly, the Pulaski County Circuit Court, the Arkansas Court of Appeals, the Arkansas Supreme Court, the United States District Court for the Eastern District of Arkansas[2], and the United States Court of Appeals for the Eighth Circuit.

5. Claimant filed a response to the motion, arguing that *res judicata* does not apply because "the [underlying] case[3] was never litigated."

6. The Claims Commission finds the UAMS' motion to dismiss should be granted. The instant claim relates to the same allegations of medical negligence as in Claim No. 15-0482-CC. Claimant's procedural avenues to challenge the Claims Commission's dismissal of Claim No. 15-0482-CC were fully exhausted through her motion for reconsideration and appeal to the Arkansas General Assembly. *See* Ark. Code Ann. § 19-10-211. The instant claim is an improper attempt to relitigate the Claims Commission's final decision in Claim No. 15-0482-CC.

[2] The Claims Commission was a defendant in the underlying federal lawsuit, *Nelda Coleman v. Pulaski County Circuit Court, et al.*, United States District Court for the Eastern District of Arkansas, Case No. 4:17CV-00816.

[3] It appears that Claimant's argument is referring to the underlying lawsuit in Pulaski County Circuit Court against the physicians (*Charles Coleman and Nelda Coleman v. Harmon Gareth Tober, M.D., and Richard Betzold, M.D.*, Pulaski County Circuit Court Case No. 60CV-14-798), which was filed by Claimant's previous counsel. That lawsuit was nonsuited.

Claims Commission's Motion to Dismiss

7. The Claims Commission, through the Arkansas Attorney General's Office, filed a motion to dismiss, arguing that dismissal is appropriate (1) for failure to state a claim upon which relief can be granted under Ark. R. Civ. Proc. 12(b)(6); (2) because Claimant's claim is barred under the doctrine of *res judicata*; and (3) because Claimant's claim against the Claims Commission (alleging that the Claims Commission held a hearing without Claimant present) is barred by the three-year statute of limitations.

8. Claimant filed a response to the motion, asserting that, with regard to Claim No. 15-0482-CC, she had "been to the Claims Commission several times and tried to reopen the case but the director refused." Claimant also alleged that the Claims Commission "violated . . . [her] due process of law by barring Claimant[s] from attending and testify[ing] at the February 5, 2015 and March 11, 2015 hearings . . . ." As to the *res judicata* argument, Claimant stated she did not "receive[ ] due process of law when the claim was filed" at the Claims Commission.

9. In reviewing a claim for purposes of determining whether Claimant stated facts upon which relief can be granted, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id*. However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380 S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not "a plaintiff's theories, speculation, or statutory interpretation." *See id*. (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

10. Upon review of the claim, the Claims Commission finds that Claimant's claim against the Claims Commission is subject to dismissal for failure to state a claim upon which relief

can be granted. Claimant admits in her complaint that Claim No. 15-0482-CC was not on the dockets for the February 5, 2015, and March 11, 2015, hearings:

> March 6, 2017: Petitioner went to the Arkansas State Claim[s] Commission to get copies of the dockets for the hearings that were held February 5, 2015 and March 11, 2015, Petitioners names were not on the dockets for the hearing, and Claimants were barred from attending the hearings.

Claimant's Complaint and Supporting Documents at ¶ 33 (emphasis added). As such, Claimant's claim that she was barred from the hearing is speculatory and not based on fact. *Dockery*, 2011 Ark. 94 at *6, 380 S.W.3d at 382. If Claim No. 15-0482-CC was not on the docket the February 2015 or March 2015 hearings, as Claimant admits, then there was no hearing from which Claimant was barred.

11. The Claims Commission suspects that the instant claim against the Claims Commission is based upon a misunderstanding occasioned by a confusing form. In 2015, the Claims Commission order forms included a blank titled "Date of Hearing." Perhaps because this date was filled in on both the February 5, 2015, and March 11, 2015, orders, Claimant feared that she had been excluded from the hearings. However, the Claims Commission has reviewed the hearing minutes from both months and concluded that Claim No. 15-0482-CC was not on docket of claims in which the Claims Commission heard argument from the parties. Instead, the Claims Commission considered the motions (UAMS' motion to dismiss in February 2015 and Claimant's motion for reconsideration in March 2015) and made rulings without *anyone* present. It is common practice for the Claims Commission or a court to rule on a motion without a hearing if the Claims Commission or court determines that argument is not necessary. In fact, this practice was codified by the Arkansas General Assembly in the 2019 regular session. Ark. Code Ann. § 19-10-210(c) ("Hearings on a motion filed a party shall be set . . . [i]f the commission finds that oral argument or witness testimony, or both, will benefit the commission in deciding on the motion").

12. The Claims Commission finds that Claimant's claim is also subject to dismissal pursuant to the doctrine of *res judicata*. Claimant had the opportunity to raise these due process issues in the underlying federal lawsuit but failed to do so. Because these issues could have been raised and were not, Claimant's claim is subject to dismissal. *Office of Child Support Enforcement v. Willis*, 347 Ark. 6, 59 S.W.3d 438 (2001).

13. The Claims Commission finds this claim must also be dismissed as time-barred. The applicable statute of limitations for constitutional claims is three years. *See Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (1992). Claimant alleges that she was deprived of due process on February 5, 2015, and March 11, 2015, yet the instant claim was not filed until December 7, 2018.

Conclusion

14. The motions to dismiss filed by UAMS and the Claims Commission are GRANTED, as stated more fully herein. Claimant's claim is DENIED and DISMISSED.

IT IS SO ORDERED.

ARKANSAS STATE CLAIMS COMMISSION
Russell P. Bailey, *Special Commissioner*

ARKANSAS STATE CLAIMS COMMISSION
Kori R. Gordon, *Special Commissioner*

ARKANSAS STATE CLAIMS COMMISSION
Jason M. Ryburn, *Special Commissioner*

DATE: September 15, 2020

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).

ARKANSAS STATE CLAIM COMMISSION
CLAIM #15-0482-CC AND
CLAIM #19-0654-CC

KATHRYN IRBY, DIRECTOR
ARKANSAS STATE CLAIM COMMISSION
101 EAST CAPITOL, SUITE 410
LITTLE ROCK, Arkansas 72201
[redacted]

Arkansas
State Claims Commission
OCT 23 2020
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MS. JULIE BENAFIELD AND
MR. VINCENT P. FRANCE
ARKANSAS ATTORNEY GENERAL
323 CENTER STREET
323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201
[redacted]

MS. SHERRI ROBINSON AND
MS. SHELLY MCGHEE
UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES
4301 MARKHAM STREET SLOT 860
LITTLE ROCK, ARKANSAS 72205
[redacted]

RE: NELDA COLEMAN V. UNIVERSITY OF ARKANSAS FOR MEDICAL SCIEIENCES; ARKANSAS STATE CLAIM COMMISSION, CLAIM #15-0482-CC AND 19-0654-CC

DECEMBER 7, 2018: CLAIMANT ASKED THE ARKANSAS STATE CLAIM COMMISSION TO REOPEN CLAIM # 15-0482-CC,

SEPTEMBER 15. 2020: THE ARKANSAS STATE CLAIM COMMISSION ORDERED THE CLAIM DISMISSED

MS. KATHRYN IRBY, CLAIMANT NELDA COLEMAN OBJECT TO THE ORDER THAT WAS ENTERED SEPTERBER 15, 2020, AND ASK THAT THE CLAIM GO TO THE ARKANSAS LEGILATIVE COUNCIL

1.

THE ARKANSAS STATE CLAIM COMMISSION

CLAIM # 15-0482-CC
CLAIM # 19-0654-CC

(1.) FEBURARY 25, 2014
BARD HENDRICK LAW FIRM FILED THE LAWSUIT IN THE PULASKI COUNTY CIRCUIT COURT, Exhibit 1

(2.) MARCH 26, 2014
BRAD HENDRICK LAW FIRM DROPED THE SUIT AND FILED NON/SUIT IT WAS GRANTED MARCH 31, 2014, Exhibit 2.

(3.) THE NON/SUIT GAVE CLAIMANTS AN EXTRA YEAR TO REFILE THE CASE. Exhibit 2.

RULE 8.1 ARKANSAS STATE CLAIM COMMISSION , THE RULES OF CIVIL PROCEDURE AS ADOPTED BY THECIRCUIT COURT OF THE STATE OF ARKANSAS WILL APPLY IN THE ARKANSAS STATE CLAIM COMMISSION

(4.) DECEMBER 22. 2014
CLAIMANTS FOUND OUT ABOUT THE ARKANSAS STATE CLAIM COMMISSION AND FILED A CLAIM #15-0482-CC, Exhibit 3,

(5.) DECEMBER 22, 2014
MRS. BRENDA WADE THE DIRECTOR OF THE ARKANSAS STATE CLAIM COMMISSION WROTE MR. FRED HARRISON GENERAL COUNSEL OF UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCE HOSPITAL ASKING IF HIS AGENCY IS ADMITTING OR DENYING LIABILITY,,SHE WOULD NOT TELL ME WHAT HE WROTE NOR GIVE ME WHAT HE WROTE, Exhibit 4,

(6.) FEBUARY 5, 2015 THE ARKANSAS STATE CLAIM COMMISSION DENIED THE CLAIM THEY STATED THEY DID NOT HAVE JURISDITION, Exhibit 5

(7.) FEBUARY 11, 2015 CLAIMANTS ASKED FOR RECONSIDERATION, Exhibit 6,

(8.) FEBUARY 11, 2016: THE STATE CLAIM COMMISSION DENIED THE RECONCIDERATION AND STATED YOU SHOULD HAVE HAD THE EVIDENCE IN THE FEBUARY 5 HEARING , THE ORDER STANDS , WE WERE ALSO BARRED FROM BOTH HEARING Exhibit D

(9.) JANUARY 16, 2015: MS. SHERRI ROBINSON ATTORNEY FOR UAMS HOSPITAL FILED A MOTION TO DISMISS THE CLAIM IN THE ARKANSAS STATE CLAIM COMMISSION , SHE STATED THE CLAIM WAS BARRED BY THE STATUE OF LIMITATION, Exhibit 8,

(10.) JANUARY 28, 2015: MS. SHERRI ROBINSON STATED THE CLAIM WAS ONE FOR MEDICAL NEGLIGENCE, BUT IT WAS BARRED BY THE STATUE OF LIMITATION Exhibit 9

(11.) MARCH 13, 2015: THE COMPLAINT WAS REFILED IN THE PULASKI COUNTY CIRCUIT COURT BY CLAIMANTS PRO/SE, CASE # 60CV-15-1033-16TH Exhibit 10,

(12.) MARCH 16, 2015: THE CLAIM WAS APPEALED FROM THE ARKANSAS STATE CLAIM COMMISSION TO THE ARKANSAS STATE LEGILATIVE COUNCIL, Exhibit 16.

(13.) MARCH 20, 2015: RETURNED RECEIPT FOR SUMMONS AND COMPLAINTSS, Exhibit 12

(14.) MARCH 27, 2015: DEFENDANTS DR. HARMON TOBLER AND DR. RICHARD BETZOLD ANSWER TO COMPLANTS AND SUMMONS, Exhibit 13,

(15.) MARCH 30, 2015 MS SHERRI ROBINSON FILED A MOTION IN THE PULASKI COUNTY CIRCUIT COURT TO DISMISS THE CASE STATING UAMS HOSPITAL THROUGH THE BOARD OF TRUSTEE IS IMMUNE FROM THE LAWSUIT , Exhibit 14,

THE JUDGE NEVER DID RESPOND TO THE MOTION,

(16) JULY 31, 2015: MS. SHERRI ROBINSON ATTORNEY FOR UAMS HOSPITAL FILED A MOTION FOR SUMMARY JUDGMENT WITH THREE FALSEFIED AFFIDAVITTS FOR DR.HARMON TOBLER, RICHARD BETZOLD, AND THE DOCTORS SUPERVISOR MS. REGINA TOUSAN FOR INSUFFICENT PROCESS AND INSUFFICIENT SERVICE OF PROCESS Exhibit 15,

(17.) AUGUST 10, 2015: PLAINTIFF SENT A LETTER TO THE JUDGE IN THE PULASKI COUNTY CIRCUIT COURT INFORMING THE COURT DEFENDANTS DID NOT SEND PLAINTIFFS A COPY OF THE JUDGMENT IT WAS FOUND ON LEGAL AID COMPUTER, NO RESPONSE FROM THE JUDGE Exhibit 16

(18.) SEPTEMBER 11, 2015: SUMMARY JUDGMENT WAS GRANTED TO DEFENDANTS Exhibit 17

(19) SEPTEMBER 14, 2015: THE APPEAL FROM THE LEGILATOR COUNCIL, THEY DID NOT LISTEN TO CLAIMANTS THEY SAID THE CLAIM WAS BARRED BY THE STATUE OF LIMITATION Exhibit 18

(20) SEPTEMBER 16, 2015: THE PULASKI COUNTY CIRCUIT COURT DISMISSED UAMS HOSPITAL Exhibit 19

(21.) STATEMENT FROM THR DEPUTY SHEIFF WHO DELIVERED THE COMPLAINTS AND SUMMONS Exhibit 20

22) The Claim Never was Hagated

(1.) RULE 8.1 : ARKANSAS STATE CLAIM COMMISSION THE RULE OF CIVIL PROCEDURE AS ADOPTED BY THE CIRCUIT COURT OF THE STATE OF ARKANSAS WILL APPLY IN THE ARKANSAS STATE CLLAIM COMMISSION

(2.) ACT 276 OF 1955
BY CREATING THE ARKANSAS STATE CLAIM COMMISSION A METHOD WAS FROMED BY WHICH DAMAGE OR INJURY PARTIES, COULD BECOMPENSATED WITHOUT THE STATE BEING MADE A DEFENDANT IN ANY OF ITS COURTS.

(3.) BY FILING THE NON/SUIT ORDERED BY THE JUDGE OF THE PULASKI COUNTY CIRCUIT COURT GAVE CLAIMANTS A EXTRA YEAR TO REFILE THE CASE,

(4.) ARK, R. CIV,P,4 (I)
FOR PURPOSE OF TOLLING THE STATUE OF LIMITATION THE SUPREME COURT LOOKS TO THE TIME THE COMPLAINT WAS FILED WHEN CAUSE OF ACTION WAS COMMENECED,

(5.) ARK CODE ANN§ 15-114-203
STATUTE OF LIMITATION, ALL ACTION FOR MEDICAL INJURY SHALL BE COMMENCED WITHIN TWO YEARS AFTER THE CAUSE OF ACTION ACCRUES,

THE DATE OF THE ACCRUAL OF THE CAUSE OF ACTION SHALL BE THE DATE THE WRONGFUL ACT COMPLAINED OF AND NO OTHER TIME

NELDA COLEMAN, CHARLES COLEMAN (DECEASED)

[redacted]

I NELDA COLEMAN, CLAIMANT DO HEREBY CERTIFY THAT A COPY OF THE FOREGOING DOCUMENTS WILL BE SENT TO THE FOLLOWING CERTIFIED VIA US MAIL ON THIS DAY OCTOBER 22, 2020

KATHRYN IRBY, DIRECTOR
ARKANSAS STATE CLAIM COMMISSION
101 EAST CAPITOL, SUITE 410
LITTLE ROCK, ARKANSAS 72201
[redacted]

-MS. JULIE BENAFIELD AND
MR. VINCENT P. FRANCE
323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201
[redacted]

MS. SHERRI ROBINSON AND
MS. SHELLY MCGHEE
UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES
4301 WEST MARKHAM STREET SLOT 860
LITTLE ROCK, ARKANSAS 72205
[redacted]

Nelda Coleman
10-22-2020

Signed before me this 22nd day of October, 2020,
in Pulaski County, Arkansas.

Notary Public
My Commission Expires 01-03-2030

LARRY J. RHODES
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires January 03, 2030
Commission No. 12709689

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