# CLAIM FOR DAMAGE, INJURY, OR DEATH

**INSTRUCTIONS:** Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO. 1105-0008

1. Submit to Appropriate Federal Agency:

Office of Chief Counsel
251 North Main Street
Winston-Salem, NC 27155

2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.

Co-Executors:Debra Cutler and Mark Hallman, [redacted]

Tony O'Dell, Esq., Tiano O'Dell, PLLC, P.O. Box 11830, 118 Capitol St., Charleston, WV 25539

| 3. TYPE OF EMPLOYMENT | 4. DATE OF BIRTH | 5. MARITAL STATUS | 6. DATE AND DAY OF ACCIDENT | 7. TIME (A.M. OR P.M.) |
|---|---|---|---|---|
| ☐ MILITARY ☒ CIVILIAN | 02/02/1931 | Widower | 06/13/2018 Wednesday | 5:30 am approx. |

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

See attached "Basis of Claim".

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

Not applicable

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).

Not applicable.

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

Personal Injury and Wrongful Death. John W. Hallman was given a shot of insulin he did not need and for which no medical order was placed. The insulin caused him to suffer severe hypoglycemia, acute respiratory distress, and then death.

11. **WITNESSES**

| NAME | ADDRESS (Number, Street, City, State, and Zip Code) |
|---|---|
| [redacted] | [redacted] |

12. (See instructions on reverse). **AMOUNT OF CLAIM** (in dollars)

| 12a. PROPERTY DAMAGE | 12b. PERSONAL INJURY | 12c. WRONGFUL DEATH | 12d. TOTAL (Failure to specify may cause forfeiture of your rights). |
|---|---|---|---|
| 0.00 | 1,000,000 | 5,000,000 | 6,000,000 |

**I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.**

| 13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). | 13b. PHONE NUMBER OF PERSON SIGNING FORM | 14. DATE OF SIGNATURE |
|---|---|---|
| Mark Hallman Debra Cutler | [redacted] | |

| CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM | CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS |
|---|---|
| The claimant is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729). | Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) |

## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

Not applicable

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

## INSTRUCTIONS

**Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.**

**Complete all items - Insert the word NONE where applicable.**

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

**Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

*(a)* In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

*(b)* In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

*(c)* In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

***(d)* Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

# BASIS OF CLAIM

**Medical Treatment and Violations of Standards of Clinical Care**

On June 12, 2018, John Hallman was admitted to the Louis A. Johnson VA Medical Center in Clarksburg, WV (hereinafter sometimes referred to as "VAMC") from the VA emergency department for work up and investigation of suspected small bowel obstruction. Radiology imaging was negative for small bowel obstruction but revealed potential for partial obstruction, and a chest x-ray revealed pneumonia vs. pulmonary edema. Mr. Hallman was placed on antibiotics, prednisone/anti-inflammatory, and fluids and admitted to 3A. Mr. Hallman's glucose level was checked as part of routine blood testing on June 12, 2019. His glucose was normal at 79, normal range is 70-109. Mr. Hallman had two prior recent glucose tests at the VA, again as part of standard blood testing, all within normal range - 6/8/18 glucose 100; 4/25/18 glucose 71 and HbA1c 4.5 (normal 3-6). During the night of June 12-13, 2018, periodic glucose meter read results included the following:

June 12 21:27 Glucose 77 (meter read taken by [redacted])

June 13 01:45 Glucose 92 (meter read taken by [redacted])

05:40 Glucose 56**L** (meter read taken by [redacted])

06:45 Glucose 26**L*** (meter read taken by [redacted])

Critical low result triggers a report to Dr. Jill Taylor- Phillips, Dextrose 50 ordered and administered

07:12 Glucose 97 (meter read taken by [redacted])

07:52 Glucose 68**L** (meter read taken by [redacted])

No further glucose readings are taken to see if Mr. Hallman's glucose level continues to decline, no testing, medication or intervention is provided for the unexplained severe hypoglycemic event. At 10:40, a plasma reading is taken with a lactate result of 29.4**H**, normal

range is 4.5-19.8. This level demonstrates that Mr. Hallman appears to be suffering from lactic acidosis. Additionally, electrolyte testing revealed that Mr. Hallman's potassium level was low, a finding consistent with insulin overdose. No further testing, medication or intervention is provided for this dramatic change in lactate level and low potassium. (Prior lactate reading on 6/12/18 was 11.8). The death summary by David Orlando, MS, PA-C and Jill Taylor-Phillips, MD reflect that Mr. Hallman was found apneic, pulseless and unresponsive at 11:25 am on June 13, 2018.

The only information the family was provided on June 13, 2018 regarding a diagnosis or need for additional medical care was that Mr. Hallman was not absorbing protein, that protein was building up in his liver and his body was not able to absorb fluids, including protein, into the bloodstream. The family was advised that Mr. Hallman might need to be transferred to ICU for direct protein treatment as such an infusion could not be performed on 3A.

A reasonable, standard of care medical work up should have been ordered and implemented in the early morning hours of June 13 to discover the cause of, diagnose, and treat the sudden severe hypoglycemia. Mr. Hallman should have been closely monitored and interventions administered when his testing demonstrated deterioration, including recurrent declining glucose levels following administration of dextrose 50, lactic acidosis, and low potassium. The physician and physician's assistant failed to order any work up to determine the cause of the glucose drop, failed to accurately or timely diagnose Mr. Hallman's medical condition, failed to order close monitoring, and failed to order any indicated treatment for his recurrent hypoglycemia, lactic acidosis, and low potassium. Based upon the records, it is not clear whether the laboratory and/or nursing personnel were timely and accurately reporting test results to the physician and/or physician assistant. To the extent test results were not timely and accurately reported by laboratory and/or nursing personnel, additional violations of the standard of care appear to exist based upon

the lack of documentation and communication between the health care team. As a result of all these failures, Mr. Hallman was injured, suffered the pain and fear of not getting enough oxygen and carbon dioxide building up, and then died.

No one timely reported to the Hallman family that several prior suspicious deaths had occurred on 3A, and no one timely reported to the Hallman family that there was no reasonable physiologic or medical explanation for Mr. Hallman's sudden hypoglycemia. Without disclosure of this crucial information, the family was not provided the information they needed to know to make an informed consenting decision to decline autopsy. The treating physician, physician's assistant, and Clarksburg VAMC should have made a referral of Mr. Hallman to the West Virginia Medical Examiner's office for autopsy. In the absence of the referral, the physician and Clarksburg VAMC should have advised the Hallman family of all the information they needed to make an informed consenting decision regarding an autopsy. Without the information they needed to know in order to make an informed decision, John Hallman was cremated. The failures of the physician, physician assistant, and the Clarksburg VAMC in this regard has prejudiced the Hallman family's ability to obtain an autopsy or an exhumation to now obtain an autopsy.

**VA/OIG/FBI Investigation**

Upon information and belief, including public official timelines, the circumstances surrounding Mr. Hallman's unexpected death including (1) his unexplained severe glucose drop to 26, (2) the person of interest's documented involvement during the hospitalization while critically low levels of glucose were recorded, (3) fact that Mr. Hallman was admitted on 3A, and (4) that his sudden medically unexplained severe hypoglycemic event occurred during the early morning hours of the night shift, prompted a team of physicians to alert VA management of the red flags surrounding Mr. Hallman's death and at least 7 other suspicious deaths that occurred

under similar circumstances. These events were eventually reported to the VA Office of the Inspector General which prompted an investigation of Mr. Hallman's death. The reported events surrounding Mr. Hallman's death further prompted an on-sight OIG investigation at the Clarksburg VA facility in early July 2018. On November 15, 2018, members of the FBI met with the Hallman family, and the family was told that the investigation results demonstrated sudden medically unexplained severe drops in Mr. Hallman's glucose levels during the early morning hours on the day Mr. Hallman died. Those severe glucose drops were not consistent with Mr. Hallman's medical history, diagnosis, and condition for which he was being treated. As a result of the extended investigation, the Office of Inspector General has determined that Mr. Hallman received insulin which was not medically indicated, the insulin caused the severe hypoglycemic reaction and acute respiratory distress, and contributed to Mr. Hallman's death. Mr. Hallman's death is considered a homicide based upon the pattern of events leading to his death, although his body is not available for autopsy.

**VAMC's Duty and Breach of Duty**

Prior to John Hallman's death, the Louis A. Johnson Clarksburg VAMC facility's inpatient death rate had an unexplained increase for at least the preceding year. The Clarksburg VAMC physicians and employed healthcare providers treating those patients failed to identify and report sentinel events related to the unexplained deaths, failed to properly inform the families of the circumstances surrounding the deaths of their loved ones, and failed to make referrals to the West Virginia Medical Examiner's Office. At least nine to ten patient deaths followed a pattern of being prompted by a sudden decline in medical condition while admitted on 3A; severe hypoglycemic events not explained by patient condition; timing of initial decline occurring during the early morning hours of the night shift; and all initial declines occurring while the person of interest was

working. Each of these nine or ten prior deaths created an antecedent, independent and affirmative duty to act to protect John Hallman, and other Clarksburg VAMC patients, from foreseeable harm before Mr. Hallman was wrongly provided insulin. The VAMC breached this affirmative duty and was negligent in multiple ways: by failing to report sentinel events; failing to thoroughly investigate each of the prior unexplained deaths and discover the cause of those deaths; failing to alert John Hallman and his family that multiple other VAMC patients at the Louis A. Johnson VA Medical Center had died suspiciously related to hypoglycemic events while admitted on 3A; failing to adequately staff its medical center; failing to identify, report and investigate each sentinel event as required by the standard of care; failing to initiate a root cause analysis after each of the nine or ten other deaths in order to prevent additional deaths and reduce the potential for patient harm; failing to securely maintain medication including insulin; failing to have proper reconciliation of medications, including insulin; failing to have proper oversight by senior VAMC management staff; failing to properly train VAMC staff; failing to timely investigate and properly treat John Hallman's hypoglycemia and elevated lactate level to prevent his death; failing to refer John Hallman and prior patients for autopsy; failing to obtain informed consent for treatment from John Hallman; and failing to provide information to the Hallman family needed to make an informed consenting decision regarding whether an autopsy should be performed. If John Hallman had been provided informed consent, he could have made an informed choice about whether to seek care at that facility or seek care someone else.

The VAMC had a duty to provide reasonable and competent medical care to its patients, including John Hallman. John Hallman had a right to be free from abuse by the staff at the facility. The VAMC had a duty to protect and prevent its patients, including John Hallman, from being administered insulin that was not medically necessary. The VAMC had a duty to properly screen

and investigate candidates before hiring. The VAMC had a duty to properly supervise its employees and not to retain employees that were a danger to patients. The VA had a duty to determine whether employees were in fact qualified by reason of education and training to be placed in the job to which the employee was assigned. Upon information and belief, the VAMC hired the person of interest to work as a certified nursing assistant when in fact she was not a certified nursing assistant, a fact that is very easy to verify. Each of these affirmative duties of the VAMC were antecedent and independent of the conduct of the person who wrongfully administered insulin to John Hallman and was a proximate cause of John Hallman's death.

The VAMC breached each of the above listed duties, which breaches were deviations from the appropriate standard of medical care and were a proximate cause of John Hallman's injuries and death. As a result of those deviations from the appropriate standard of care, John Hallman was exposed to unnecessary, foreseeable and preventable dangers, and it was those deviations by the VAMC that were a proximate cause of his death. In addition, if the employee of the Louis A. Johnson VA Medical Center who wrongfully administered insulin to John Hallman did so negligently, then such negligence is also deviation from the appropriate standard, and the VAMC is responsible for the negligence of its employees under *respondeat superior*.

**Monetary Damages and Claim for Relief**

As a direct and proximate result of deviations from the appropriate standards of medical care described herein which caused John Hallman's injuries and wrongful death, his statutory beneficiaries are entitled to all non-economic and economic damages allowed under West Virginia law, including sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent, pain and suffering, mental anguish, funeral costs of $2,866.54, loss of income in the approximate amount of $4,338.67 per month

throughout the remainder of John Hallman's natural life, and loss of household services in the approximate amount of $16,500 per year throughout the remainder of John Hallman's natural life.

**Attachments**

1. Braxton County Clerk's Certificate of Still Acting Co-Executors appointing Debra Cutler and Mark Hallman Co-Executors of the Estate of John W. Hallman.
2. Laboratory Reports from June 13, 2018 demonstrating sudden hypoglycemia and glucose meter readings and elevated lactate from the Louis A Johnson VAMC , Clarksburg, WV
3. Funeral Bill for the funeral of John W. Hallman
4. Death Certificate of John W. Hallman file number 010622.

# COUNTY CLERK'S CERTIFICATE OF STILL ACTING CO -EXECUTORS

STATE OF WEST VIRGINIA
Braxton County Clerk's Office, to-wit:

I, SUE ANN RUTHERFORD, Clerk of the County Commission of Braxton County, West Virginia, do hereby certify that Debra Cutler and Mark Hallman on the 3rd day of July, 2018, appeared before the Clerk of the Braxton County Commission and was duly appointed Co-Executors

State whether it be "De Bonis Non" or "with the will annexed"

of the estate of John Hallman, deceased, and the said Debra Cutler and Mark Hallman was duly qualified as the law directs, as such Co-Executors, and I do further certify that the Debra Cutler and Mark Hallman is still the legal Co-Executors of said estate and his lawful acts as such are entitled to full faith and credit.

Given under my hand and the seal of said commission, this 3rd day of July 2018

Sue Ann Rutherford
Clerk of the County Commission of
Braxton County, West Virginia