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MEMORANDUM

To: Budd Milazzo, Executive Branch Budget Officer

From: Nancy Katafias, Tort Claims Manager

Date: April 8, 2024

Subject: BOE Agenda Submittal
Estate of Clinton Swaim, Renee Swaim-surviving spouse, Clinton Swaim and Kalyn Swaim-surviving children

Please place the following item on the May 14, 2024, Board of Examiner's agenda for approval. Upon approval, it is requested that this payment be processed through the Statutory Contingency Fund.

Pursuant to NRS 353.264, payment of a claim which is an obligation pursuant to NRS 41 will be paid by the Statutory Contingency Fund if the money in the Fund for Insurance Premiums is insufficient to pay the claim.

Plaintiff: Estate of Clinton Swaim, Renee Swaim-surviving spouse,
Clinton Swaim and Kalyn Swaim-surviving children

Claim No.: TC 19926

Payment: \$535,000.00

Payable to: T 32003946 Gallian Welker & Associates
730 Las Vegas Blvd S #104
Las Vegas NV 89101

TORT CLAIM RECOMMENDATION

DATE: March 27, 2024
CLAIMANT: Estate of Clinton Swaim, Renae Swaim, Clinton Swaim
and Kalyn Swaim-children of the deceased
CLAIM NUMBER: TC19926
DATE OF LOSS: December 10, 2019
AGENCY: DHHS/DPBH - Lakes Crossing

DISCUSSION

In the lawsuit filed against the DHHS/DPBH, through counsel, the Estate of Clinton Swaim, Mr. Swaim's wife, Renae, and 2 their children allege wrongful death; negligence; negligent hiring, training, selection and supervision; emotional distress, and deliberate indifference to a serious medical need due to allegations that Mr. Swaim was left unwatched and ending his life while he was at Lake's Crossing.

The lawsuit named 20 defendants in State and Federal actions. To avoid the costs of extensive discovery and a potential adverse large judgment, which would result in the payment of opposing counsel attorney fees, the case was settled at a Nevada Supreme Court settlement conference.

Settlement is cost effective for the State. Pursuant to NRS 353.264, payment of this claim is requested to be made from the Statutory Contingency Fund.

RECOMMENDATION

It is recommended that the claim be paid in the amount of \$535,000.00.

RECOMMENDATION: PAY

G/L 7357 Gallian Welker & Beckstrom, LC
540 East St Louis Ave
Las Vegas NV 89104

Approved:

Nancy Katafias March 27, 2024
NANCY KATAFIAS, CLAIMS MANAGER DATE

Leslie Nino Piro April 8, 2024
LESLIE NINO PIRO, GENERAL COUNSEL DATE

Settlement Agreement and Full and Final Release of Claims

Case Name(s): *Renae Joy Swaim, et al., v. State of Nevada, et al.*

Case No(s): U.S. District Court Case No. 3:21-cv-00502-ART-CSD and Nevada Supreme Court No. 87913 (Second Judicial District Court Case No.: CV23-00275); hereinafter referred to collectively as:

“The Matter”

<u>Plaintiffs:</u> (1) Renae Joy Swaim, Special Administrator of the Estate of Clinton Lee Swaim; (2) Renae Joy Swaim, individually; (3) Clinton Thomas Swaim, Jr.; and (4) Kalyn Renae Swaim	<u>Defendants:</u> State of Nevada, <i>et al.</i> (as fully enumerated below)
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This Settlement Agreement and Full and Final Release of Claims (“**Agreement**”) is made and entered into by Plaintiffs Renae Joy Swaim, Special Administrator of the Estate of Clinton Lee Swaim; Renae Joy Swaim, individually; Clinton Thomas Swaim, Jr.; and Kalyn Renae Swaim (collectively, “**Plaintiffs**”); and the State of Nevada *ex rel.* Nevada Department of Health and Human Services, Division of Public and Behavioral Health; David S. Atherton; Matthew J. Bowman; Daiki “Sam” Branch; James G. Cameron; Vivian K. Davis; Isaac D. Flores; Joel Gomez; Christopher Henry; Samantha L. Lyons; Erick R. McBride; Michael “Rick” Meier; Bradley K. Mitchell; Luis A. Orozco; Laci N. Patiga; Nicholas M. Patiga; Brandon K. Taylor; Tanner H. Trout; and John P. West (jointly referred to herein as “**DPBH**”). This Agreement is being entered into by Plaintiffs and DPBH (each a “**Party**” and, collectively, the “**Parties**”) because each of them has determined that resolving this Matter by way of settlement is preferable to continuing to litigate the Matter before, separately, the U.S. District Court for the District of Nevada and the Supreme Court of Nevada (collectively, “**The Courts**”).

Plaintiffs and DPBH have agreed to resolve all claims raised in this Matter on the following terms:

1. The State of Nevada, on behalf of DPBH and all individually named Defendants, upon approval by the Board of Examiners (“**BoE**”), will pay to Plaintiffs the sum of \$535,000.00 (FIVE HUNDRED THIRTY-FIVE THOUSAND and NO/100 DOLLARS) (the “**Settlement Amount**”) to be disbursed to Plaintiffs’ Counsel (as defined below) as further set forth in paragraph 4 of this Agreement. This payment will be paid to Plaintiffs from the State of Nevada Tort Fund. The Settlement Amount is inclusive of all attorneys’ fees and costs as further detailed below in paragraph 4.

2. As this Agreement requires payment of more than \$100,000.00, it is acknowledged by the Parties that this Agreement must be approved by the BoE. DPBH will present this Settlement to the BoE for approval at the earliest meeting following execution of this Agreement by all Parties, which is anticipated to be the May 14, 2024, BoE meeting. Time is of the essence, and all Parties shall exercise reasonable diligence to ensure presentation of this Agreement to the BoE for the May 14, 2024, BoE meeting. DPBH's counsel shall promptly notify Plaintiffs' Counsel whether the BoE approved, denied, or otherwise acted upon the Agreement.
 - a. In the event the BoE does not approve this Agreement, neither Party is bound by any term in this Agreement.
 - b. In the event the BoE does not approve this Agreement, the Parties, including Plaintiffs, are free to continue to litigate the Matter, or, at the Parties' discretion, continue to attempt to negotiate a settlement of this Matter, understanding that any future settlement terms that may be agreed to between the Parties may differ from the terms herein and may also be subject to BoE approval.
3. In consideration of the Agreement above, Plaintiffs (through Counsel) have prepared or executed relevant Stipulations and Orders to Dismiss the Matter concurrent with execution of this Agreement. The Parties consider the various Stipulations and Orders to Dismiss part of this Agreement. Counsel for either Plaintiffs or DPBH shall file the signed Stipulations and Orders to Dismiss into the respective dockets in this matter after DPBH has fully complied with the terms set forth in paragraph 1 of this Agreement and payment of the Settlement Amount has been received by Plaintiffs' Counsel. This will terminate all claims raised in this Matter as defined in Paragraph 6.
 - a. The State of Nevada, on behalf of DPBH and all individually named Defendants, will comply with the terms set forth in paragraph 1 of this Agreement as soon as is practicable after BoE approval of the Agreement as set forth in paragraph 2 of this Agreement.
 - b. In the event that the State of Nevada is not able to comply with the terms set forth in paragraph 1 within forty-five (45) calendar days after BoE approval, Plaintiffs' Counsel will meet and confer with DPBH's counsel prior to filing any Motion to Enforce this Agreement. Plaintiffs also agree that any Motion to Enforce will only be filed after they have provided DPBH and its counsel an additional fifteen (15) days to comply with the terms of this Agreement. The terms of this paragraph 3(b) may be extended by mutual written consent of Parties' counsel. Should DPBH not comply with the Agreement, the U.S. District Court will retain total control over any and all rulings until such time as the Stipulations and Orders to Dismiss are filed, signed, and entered by the Court. In the event Plaintiffs are

required to file a Motion to Enforce, Plaintiffs shall be entitled to recover from DPBH the attorneys' fees and costs incurred for such motion, in addition to any applicable interest thereon.

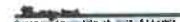
- c. The signed Stipulations and Orders to Dismiss will be filed by Plaintiffs' or DPBH's counsel within seven (7) days after DPBH's compliance with the terms set forth in paragraph 3(a). This will terminate all claims raised in the Matter as defined in Paragraph 6.
4. Plaintiffs are represented in this Matter by counsel: Michael E. Welker, Travis N. Barrick, and Nathan E. Lawrence, of the law firm of Gallian Welker & Associates, L.C., ("Plaintiffs' Counsel"). Plaintiffs and Plaintiffs' Counsel have separately negotiated and agreed upon an apportionment of the Settlement Amount. DPBH will disburse the Settlement Amount as instructed by Plaintiffs and Plaintiffs' Counsel. The following apportionment of the Settlement Amount is reported to fulfill the Parties' obligations under NRS § 41.0375(1)(b):
 - a. \$319,102.21 to be disbursed to Plaintiffs via Plaintiff's Counsel, payable to Gallian Welker & Associates, L.C. (NV IOLTA Trust Account).
 - b. \$203,300.00 in attorneys' fees to be disbursed directly to Plaintiff's Counsel, payable to Gallian Welker & Associates, L.C. (NV IOLTA Trust Account).
 - c. \$12,597.79 in advanced costs to be disbursed directly to Plaintiff's Counsel, payable to Gallian Welker & Associates, L.C. (NV IOLTA Trust Account).
 - d. Plaintiff and Plaintiff's Counsel understand that the amounts in paragraphs 4(a)-(c), totaling \$535,000.00, will be paid by the State of Nevada's Tort Fund and provided to Plaintiffs' counsel in one or more checks or via ACH direct deposit, with Plaintiffs' Counsel being responsible for distributing the funds in the manner set forth in paragraphs 4(a)-(c).
5. This Agreement represents a mutual release of all claims related to or arising out of this Matter or any facts pertinent to or underlying this Matter. Plaintiffs and DPBH understand that they are entering into a comprehensive settlement that is meant to represent a complete release of all claims related to the Matter.
6. Plaintiffs understand that dismissal of this Matter applies to: (a) all claims, including but not limited to state and federal claims, that were or could have been raised in this Matter or that could have been brought in any proceeding in a court of appropriate jurisdiction; and (b) all Defendants that were or could have been named in the Matter, whether those Defendants are current or former employees of the State of Nevada, Nevada Department of Health and Human Services, and Division of Public and Behavioral Health.

7. Plaintiffs understand that by entering this Agreement, neither the State of Nevada nor any of the individually named Defendants are making any admission of liability for the claims raised in the Matter.
8. Plaintiffs understand that, other than the payments specified in paragraphs 4(a)-(c) of this Agreement, neither Plaintiffs nor Plaintiffs' Counsel are entitled to any other payments, including, but not limited to, attorneys' fees and costs, filing fees, copy costs, or postage, except as stated in paragraph 1 above.
9. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada. Should any court declare or determine any provision of this Agreement to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The Parties acknowledge that the Agreement has been drafted by both Parties, and, therefore, any ambiguity in the Agreement will not be construed in favor or against either Party.
10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. This Agreement may also be executed by the manual or electronic signature of a party. Each Party agrees that the Parties' electronic signatures included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, 15 U.S.C. §§ 7001-7031, and the Uniform Electronic Transactions Act, NRS Chapter 719.
11. Plaintiffs and DPBH understand that the U.S. District Court for the District of Nevada retains jurisdiction over the Matter for purposes of enforcing this Settlement Agreement until the Stipulations and Orders to Dismiss are granted. Once the Court has signed the Stipulations and Orders to Dismiss, and the cases are dismissed, the Court will no longer have jurisdiction over this(ese) case(s).


(Signature page follows.)

Plaintiffs:


On behalf of DPBH:


Renae Joy Swaim, Special
Administrator of the Estate
of Clinton Lee Swaim
Date: 14/03/2024

By: Cody L. Phinney
Name: Cody L. Phinney
Title: Administrator
Date: 3/20/2024


Renae Joy Swaim, Individually
Date: 14/03/2024


Clinton Thomas Swaim, Jr.
Date: 14/03/2024


Kalyn Renae Swaim
Date: 14/03/2024