



OFFICE OF THE PRESIDENT

November 25, 1997

SPECIAL MASTER'S FINAL REPORT

DATE

COMM.

ACTION

The Honorable Toni Jennings
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

12/03/97
02/02/98

HC
WM

Fav/1 amendment
Fav/1 amendment

Re: SB 14 - Senator Forman
HB 1769 - Representative Bradley
Relief of Tirini S. Riley

THIS \$1 MILLION CLAIM IS BASED ON A CONSENT FINAL JUDGMENT, SUPPORTED BY A SETTLEMENT AGREEMENT IN WHICH THE SOUTH BROWARD HOSPITAL DISTRICT AGREED TO COMPENSATE THE CLAIMANT AND HER FAMILY FOR CATASTROPHIC INJURIES SUSTAINED IN AN INCIDENT OF HOSPITAL MALPRACTICE.

FINDINGS OF FACT:

Tirini Riley was born in 1988, 2½ months prematurely. She remained hospitalized for over 7 months. One of her more serious birth defects was a narrowed windpipe just below her voice box. By age 4, because of this birth anomaly which had been aggravated and scarred by prolonged intubation, Tirini needed surgery to enlarge the interior diameter of her airway. After consulting with a board-certified general surgeon who had a certificate in pediatric surgery, Tirini's mother consented to a cartilage graft larygotracheoplasty. The plan was to close Tirini's old tracheostomy site; split open a section of her windpipe; and graft into these expanded walls several pieces of cartilage, surgically removed from her rib area. The procedure was highly specialized and had potential complications of blood clotting, generalized bleeding, and plugging of the airway at or below the surgical site, any of which, if unrecognized or untreated, could impede passage of air into the lungs or block the blood from exchanging oxygen

for CO₂ within the lungs' air sacs. Depending on the degree of blockage, a cardiopulmonary arrest and the inevitable brain damage could be expected soon to follow.

The surgery at Memorial Hospital on July 27, 1993, several months before Tirini's 5th birthday, apparently was satisfactory. However, between late morning when she was taken to the pediatric intensive care unit, and about 10:40 that night, several significant things happened. Several occurrences of fresh blood were observed in her endotracheal tube. The presence of these streaks of blood was reported to her surgeon, Dr. Drucker, by phone, by at least 5:30 in the afternoon. However, after each of several observations, suction was applied and the streaks of blood cleared, giving the nursing and respiratory therapy staff, as well as Dr. Drucker, a reduced sense of urgency. However, more significantly, the readings on the monitoring device that indicated the amount of pressure necessary to push air into Tirini's lungs began to rise throughout the late afternoon. By evening, the meter indicated a little more than double the amount of pressure that was expected and tolerable. These readings clearly signaled that there was some sort of dangerous obstruction in the tubing, or in the airway below the end of the tubing.

At this point in the case, the finger-pointing started.

Tirini's surgeon, Dr. Drucker, had staff privileges at, but was not an employee of, the hospital. The nurses and inhalation therapists were hospital employees. Beginning with the night of the surgery and running all the way through to the pre-trial depositions, the nurses' testimony was that they repeatedly notified Dr. Drucker and others of the presence of blood and the rising pressure readings. They also said that they carried out, to the letter, all of Dr. Drucker's verbal and written orders. On the other hand, the physicians (and their lawyers and insurance companies) generally took the position that the nurses did not follow Dr. Drucker's orders and did not keep him appropriately, fully, and timely advised of Tirini's deteriorating condition.

At about 10:10 that evening, just after the surgical resident had examined Tirini, and after talking by phone with the pediatric ICU nurse who was caring for Tirini, Dr. Drucker

perceived that this patient needed something other than that which the nursing staff and a hospital medical staff were providing. He told Nurse Wallace that he was coming to the hospital to examine and further assess Tirini. He apparently then phoned his partner, Dr. Birken, and asked him to come in also to see Tirini because Dr. Birken lived closer to the hospital and presumably could get there quicker. Dr. Birken arrived first and did an emergency tracheostomy within minutes after he walked through the door; however, that apparently was after Tirini had suffered her cardiovascular failure with its resulting massive insult to her brain which rendered her totally and permanently brain damaged, cortically blind, and virtually totally neurologically impaired. Tirini, now age 7, requires 24-hour care, has no control over any of her normal bodily functions, is fed through a G-tube, and will continue to grow to adult size, but will remain in her current globally encephalopathic neurologic condition for the remainder of her life.

CONCLUSIONS ON LIABILITY:

Memorial Hospital is licensed to and operated by the Respondent, South Broward Hospital District. The claimant has established to my satisfaction, by a preponderance of evidence, that the hospital staff owed her a duty of care, that their applicable duty to her was breached by the hospital's medical and nursing staff, that claimant's damages were a proximate and foreseeable result of that breach, and that her damages are catastrophic and permanent in nature.

As in many cases of this nature, the various named defendants shared the responsibility for the result, and although reasonable people might disagree with the allocation of the responsibility among the defendants, I find that the sum to be paid by the South Broward Hospital District is supported by the evidence against it, in light of all the circumstances.

THE SETTLEMENT:

After mediation and before trial, all the parties to the lawsuit that underlies this claim agreed to settle for a gross amount of \$3,875,000, paid or to be paid as follows:

Dr. Drucker's malpractice insurer	\$250,000
Dr. Drucker, personally	\$225,000 ¹

¹ Although not relevant to legislative action, Dr. Drucker has apparently not paid the overdue \$225,000 personal obligation required by his settlement agreement with the Rileys, and litigation between Dr. Drucker and the Rileys is likely to follow.

Dr. Birken's malpractice insurer	\$250,000
Dr. Rotlewicz' malpractice insurer	\$1,950,000 ²
South Broward Hospital District	\$1,200,000

The South Broward Hospital District has already paid \$200,000 to Tirini's mother and father. Payment of the \$1 million balance of the District's portion of the settlement is contingent on the passage into law of this claim bill.

RESPONDENT'S POSITION:

As part of the settlement, the District has agreed to support the passage of Senate Bill 14 (1998) in the current amount of \$1 million, to be paid in a lump sum from the District's risk management fund.

TRUST FUND:

To protect the funds paid or to be paid by all the defendants, to ensure their proper expenditure, and to preserve Tirini's Medicaid eligibility, Beverly Riley, Tirini Riley's mother, has been appointed as co-trustee of a Special Needs Trust. The other co-trustee is SunTrust Bank, South Florida, N.A. The Trust is irrevocable during Tirini's lifetime, and at her death will reimburse the Florida Agency for Health Care Administration for all funds expended by or through that agency for Tirini's lifetime care. The net balance will be distributed to Tirini's estate. The Circuit Judge in Broward County has retained jurisdiction to oversee expenditures from the trust fund.

ATTORNEYS FEES:

Attorney for the claimant has provided the Senate with an Affidavit to the effect that his firm's fees will be limited to 25 percent of all gross amounts paid or to be paid by the South Broward Hospital District, either before or after the claim bill is enacted into law.

INTEREST:

The Legislature historically has not required respondents to

2 Dr. Rotlewicz' carrier has borne the largest single portion of the defendants' composite financial responsibility in this settlement. Of course, Dr. Rotlewicz' interests were neither represented nor discussed at the Special Master's hearing. He, like Drs. Drucker and Birken, was not an employee of the South Broward Hospital District, but apparently had staff privileges at the hospital. The record indicates that Dr. Rotlewicz, a pediatric intensive care specialist, did a brief assessment of Tirini in the PICU shortly after noon on the day of the operation. When he called the unit from somewhere in the hospital sometime shortly after 10:00 p.m., to inquire about another patient he was admitting, he was apparently told of Tirini's bleeding complication and about the steadily increasing readings on the peak inspiratory pressure monitor. He did not come to the unit, although it is not clear that he was specifically asked to.

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pay post-judgment interest over and above the amount of the principle amount of the claim, unless there was intentional and unwarranted foot-dragging by the respondent. I find no such activity in this case and recommend that the interest provision be deleted.

RECOMMENDATIONS:

Accordingly, I recommend SB 14 (1998) be AMENDED to delete the provision for post-judgment interest, and be reported FAVORABLY AS AMENDED. An amendment is attached.

Respectfully submitted,

D. Stephen Kahn
Senate Special Master

cc: Senator Forman
Representative Bradley
Faye Blanton, Secretary of the Senate
Richard Hixson, House Special Master