

December 1, 1997

SPECIAL MASTER'S FINAL REPORT

<u>DATE</u>	<u>COMM.</u>	<u>ACTION</u>
12/03/97	HC	Favorable
02/02/98	WM	Fav/1 amendment

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

Re: SB 60 - Senator Gutman
HB 3057 - Representative Ritter
Relief of Jeanette Alonso

THIS \$3.8 MILLION EXCESS JUDGMENT CLAIM IS NOT BASED ON A JURY VERDICT, BUT ON AN AGREEMENT OF THE PARTIES IN WHICH THE PUBLIC HEALTH TRUST OF DADE COUNTY d/b/a JACKSON MEMORIAL HOSPITAL CONSENTED TO PAY CLAIMANT AND HER FAMILY FOR CATASTROPHIC INJURIES SUSTAINED IN AN INCIDENT OF HOSPITAL MALPRACTICE.

FINDINGS OF FACT:

On September 13, 1990, at age 2 weeks, Melanie Alonso brought her otherwise healthy and normal infant to the Jackson Memorial Hospital emergency department because of concern over Jeanette's flu-like symptoms of fever, constipation, runny nose, cough, lethargy and decreased appetite. Jeanette was admitted to the pediatric unit and had a number of lab tests to rule out an infection in her bloodstream and meningitis, and to try to identify and treat her medical problem. Several days went by and Jeanette's condition seemed generally to worsen. She started abnormal jerking motions of her legs, and experiencing some respiratory distress.

At the time, the medical staff in Jackson's pediatric unit operated on the clinical team system. In addition to the attending physicians and the chief resident, there were three teams, each of which had a daytime team leader who was a 3rd year resident, and usually four interns. The teams divided up the daytime work of caring for as many as 80 pediatric

patients on the unit. Each night, a 3rd year resident, assigned on a rotation system, was on call and had supervisory responsibility for the intern on duty and for all three teams' pediatric patients. At night, one intern could have direct responsibility for as many as 80 patients and be required to respond to the night nurses' inquiries concerning them. If a medical problem came up that the night intern couldn't handle, it was up to that intern to coordinate further physician support.

The intern on duty who was directly responsible for Jeanette's care between 4 p.m. on September 17th and 8 a.m. on September 18th was Dr. Noelle Ruddock. Dr. Ruddock, who had been at Jackson Memorial less than 3 months, graduated from the University of the West Indies Faculty of Medicine in March 1985 with bachelor's degrees in medicine and in surgery. She had done a 2-year rotating internship at Princess Margaret Hospital in Nassau, then returned to Kingston for a year of study after which she was awarded a Diploma in Child Health. She went back to Nassau where she worked for 2 years at Princess Margaret Hospital in what is roughly equivalent to a U.S. residency program. At that point she applied for and got a 3-year pediatric residency at Jackson Memorial Hospital in Miami. Dr. Ruddock had been licensed as a physician in the Bahamas in 1988. She was not, nor was she required to be licensed in Florida at the time she treated Jeanette Alonso. She had taken and had passed the FLEX exam in 1989, but didn't obtain her initial Florida medical license until 1993.

On the evening of September 17, 1990, Dr. Ruddock first examined Jeanette sometime between 6 p.m. and 7 p.m. Updated blood test results were given to Dr. Ruddock at 9:17 p.m. It is unclear how many times over the course of the night Dr. Ruddock actually checked on Jeanette. She claims to have done so four times; however, the infant's medical records do not clearly support that number. Near the beginning of the shift, when the nurse reported that Jeanette was having blood-tinged burps, Dr. Ruddock concluded that it may have been blood that the infant had swallowed at birth, or from an irritated stomach lining, or perhaps from inside Jeanette's mouth. Apparently Dr. Ruddock was not told of Jeanette's abnormally low 95.8° temperature at 4 a.m. when a

nurse put a blanket on the baby and then moved her to a warming bed. When Dr. Ruddock learned of this situation afterwards, her explanation was that the room temperatures on the ward were kept cold at night. She also apparently didn't perceive a significant connection between these symptoms and Jeanette's seizures that she herself had eye-witnessed and charted on one occasion that night.

A day or so before September 17th, Jeanette's sodium level began to plummet to what even Dr. Ruddock later admitted was an "abnormally low level." She attributed Jeanette's hyponatremia to Syndrome of Inappropriate Antidiuretic Hormone Secretion [SIADH], in other words, the passing of highly concentrated urine which had diluted Jeanette's sodium level. Dr. Ruddock concluded that Jeanette was not low on sodium, but was holding onto water that was diluting the existing sodium. The doctor's choice of treatment was not to add sodium via an IV drip, but to restrict Jeanette's fluid intake. Accordingly, Dr. Ruddock left instructions that Jeanette was to be given no oral fluids. Dr. Ruddock also reduced Jeanette's IV drip rate by $\frac{1}{3}$. These decisions preceded further seizures and the respiratory arrest that was discovered when the morning shift physician came to the pediatric ward to do rounds. By that time, the damage had been done to Jeanette's brain. The transfer to pediatric ICU about 8:30 a.m. on September 18th could do nothing to reverse Jeanette's condition. The admitting note by the physician in the pediatric ICU concluded that the seizures were most likely secondary to decreased sodium, a condition that if it had been properly and timely diagnosed, could have been treated with a 2 bag of sodium chloride infused in Jeanette's existing drip line. When this treatment was administered in the pediatric ICU later that day, its effect was to shoot Jeanette's sodium level back up into the normal range. By that time, however, irreversible brain injury and paralysis had occurred.

Jeanette Alonso is profoundly mentally handicapped. She is non-ambulatory, she has limited vision; however, her hearing is largely intact and she responds to familiar voices by smiling. She is fed through a G-tube. She has no control over her normal bodily functions. She requires constant care.

RESPONDENT'S POSITION: At the Special Master's hearing, the attorney for the Dade County Public Health Trust that operates Jackson Memorial Hospital summed up his client's position in one word-- "indefensible." He said that after the facts had been investigated, the Public Health Trust assumed full responsibility for the catastrophic injuries to Jeanette Alonso which were caused by employees of the hospital. Since that time, the hospital has cooperated fully with claimant's family and attorneys to reach a settlement that will provide for all of Jeanette's financial needs throughout her life. The Dade County Public Health Trust, acting through its duly authorized President and Chief Executive Officer, formally concurs in the passage of this claim bill. The consideration for the Trust's consent and joinder in the entry of a Final Judgment was claimant's abandonment of her initial demand for a jury trial which all parties generally agree had the possibility, if not the likelihood, of resulting in a judgment against the Public Health Trust in an amount larger than the \$4 million settlement figure.¹

CONCLUSIONS ON LIABILITY: The core of the medical negligence in this case has several facets. The physician appears to have selected a recognized and appropriate treatment for SIADH; however, SIADH is apparently not what this infant had. There is no explanation in the medical records or in Dr. Ruddock's later deposition testimony of why she chose to decrease Jeanette's intake of fluids, both by mouth and IV, when the opposite treatment was indicated. There also is no hint in the medical records or in the explanation offered at the Special Master's hearing, either by representatives of the claimant or of the hospital, as to the REASON that this child's sodium level fell so precipitously after being within normal range during her first

¹ There would have been facts introduced in the trial of this case by claimant's lawyer that would have moved even the most hardened jurors. After Jeanette was discharged from Jackson Memorial, she was admitted to Miami Children's Hospital where her parents were called upon by the hospital's ethics committee to make the most difficult decision any parent can make: whether to voluntarily end their child's life. The family had been told by the physicians at both Jackson and Children's that Jeanette would never be able to breathe on her own, that because of the catastrophic damage to her brain she had no chance for any type of recovery, and that if she were taken off of the life support system she would die. In fact, after several attempts to extubate Jeanette, she turned blue. So, after 2 weeks of agonizing over the Children's Hospital medical ethics committee's request to allow them to stop life support, preparations for death were made. The extended family gathered together at the hospital to say their good-byes. "Final" photos of the family group were taken, and while cradled in her mother's arms, Jeanette was removed from life support. Jeanette fought for breath. Against all expectations, Jeanette continued to breathe on her own, as she has to this day, over 7 years later.

few days at Jackson; however, whatever the cause, the decreased level of sodium with levels of 117 and 119 mmol/l could itself have lead to death. The recognized treatment to increase the low level of sodium should have been obvious. The low body temperature and the tonic seizures were indicators that the infant's body was shutting down. If nothing else, the bottom line here is that on the night of September 17-18th, this child belonged in the pediatric intensive care unit where these warning signs would have been monitored, not in a room with a dozen or so other pediatric patients, and totally disregarded for about 3½ hours, as was the situation between roughly 4:30 p.m. and 8 a.m. on September 18, 1990.²

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.

PAYMENT:

The Dade County Public Health Trust has already paid the initial \$200,000 of this claim. At the Special Master's hearing, the respondent hospital's attorney suggested that the hospital hoped that the Legislature might pay this claim directly from state general revenue, or in the alternative, increase the state funding for Jackson Memorial Hospital by the amount of the judgment. Internally, the Public Health Trust apparently believed that the Legislature would do neither, but would merely authorize and direct the Public Health Trust to abide by its bargain and pay the \$4 million total out of its risk management self-insurance fund. Jackson Memorial Hospital currently has about \$28 million in its self-insurance trust fund, the purpose of which is to pay claims

² Jeanette's maternal grandmother was at the hospital throughout the night of September 17th, beginning at about 9:30 p.m., when she came to relieve her daughter, Jeanette's mother. She saw Jeanette twitching intermittently throughout the night. The grandmother expressed concern about it to the nurse. She also told the nurse that Jeanette felt unusually cold. She received repeated assurances from the nurse on duty that the physician had been informed of Jeanette's condition. She testified that from 4 a.m. to about 7:30 a.m., when she was relieved by another family member, that Jeanette was completely unattended by any physician or nurse. The chart essentially corroborates Grandmother Duff's recollection and recitation of the night's events.

against it as they are adjudicated or settled. This fund is currently tied to $\frac{2}{3}$ of the actuarial estimate of the hospital's total projected liability on a moving basis. In short, Jackson has the money available to pay this claim.

Jackson Memorial Hospital is a very large and expensive public health facility. In 1996, it had gross revenues of just under \$1.2 billion, and it provided \$267 million worth of charity care. In the fiscal year ending June 30, 1997, it received about \$154 million in Medicaid reimbursement and \$100 million in disproportionate share payments, including about \$8 million to run its perinatal intensive care centers. The Medicaid program is a 45 percent state and 55 percent federal match, and the state's portion is funded essentially with General Revenue, right off the top, because of its entitlement status. The point is that there are a lot of state general revenue dollars that go to the operation of this hospital, and it is foreseeable that the hospital administration will ask the Legislature next year to increase its General Revenue contribution to offset the payment required by this claim bill, and thus spread the cost of Jackson's employees' negligence over all of the state's taxpayers.

CO-DEFENDANT:

The University of Miami, a private educational institution that has a medical school with students who intern at Jackson Memorial Hospital, initially was a co-defendant in the underlying lawsuit. From the outset, the University denied any involvement in or connection to the incident. However, in her resume, Dr. Ruddock had stated that she was in a "Pediatric Residency University of Miami/Jackson Memorial Hospital." Her residency was in fact at Jackson, not at the University, but this reference to the University, perhaps innocently overstated by Dr. Ruddock, prompted the University of Miami to pay claimant \$100,000 to put some distance between itself and any exposure to a trial jury, and to avoid the costs of a defense of the case at trial.

SPECIAL NEEDS
TRUST FUND:

To protect the funds paid or to be paid by both of the defendants, to provide for Jeanette's supplemental needs, to ensure proper expenditures, and to preserve Jeanette's Medicaid eligibility, Jeanette's parents have created a Special Need Trust to receive all the funds, minus attorney's fees and costs, received as compensation for this incident. The trustee

is SunTrust Bank, Miami, N.A. The Trust is irrevocable during Jeanette's lifetime, and at her death will first reimburse the Florida Agency for Health Care Administration for all funds expended by or through that agency for Jeanette's lifetime care. The net balance will be distributed to Jeanette's mother and father, or their survivor, and in the event neither of them survives Jeanette, then to Jeanette's intestate heirs. The Circuit Court in Dade County has entered a Final Judgment and has retained jurisdiction to oversee all expenditures from the trust fund.

ATTORNEYS FEES:

Attorney for the claimant has provided an assurance that his firm's fees will be \$1 million, which is 25 percent of all gross amounts paid or to be paid by the Dade County Public Health Trust, either before or after the claim bill is enacted into law.

RECOMMENDATIONS:

Accordingly, all the required elements being in place, I recommend Senate Bill 60 (1998) be reported FAVORABLY.

Respectfully submitted,

D. Stephen Kahn
Senate Special Master

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