THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/4/09	SM	Fav/1 amendment
3/09/10	HR	Fav/CS

December 4, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 30 (2010)** – Health Regulation Committee and Senator Charles Dean
Relief of Lois Lacava

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM FOR $250,000 BASED ON A CONSENT FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT WHICH ORDERED MUNROE REGIONAL HEALTH SYSTEM, INC., TO PAY CLAIMANT LOIS LACAVA FOR DAMAGES SHE SUFFERED AS A RESULT OF ALLEGED NEGLIGENT MEDICAL CARE.

FINDINGS OF FACT:

In September 2005, the Claimant fell and fractured her right hip. She was 79 years old at the time and living in Ocala. The Claimant was taken to the emergency room of Munroe Regional Medical Center (MRMC). An orthopaedic surgeon, Dr. Robert Brill, was assigned to treat the hip fracture. Following the surgery, Dr. Brill was not satisfied with the union of the bones in the fracture area, and scheduled a partial hip replacement. The second surgery was performed on November 10, 2005. The x-rays taken after the hip replacement showed that the prosthetic right hip and right leg were dislocated and there were new fractures in the hip and acetabulum (socket). However, no surgery or other action was scheduled to correct the dislocation and new fractures.

It is important and, therefore, a general practice for a hospital nursing staff to make periodic neurovascular assessments of a post-operative patient to verify that blood circulation is good in the area affected by the surgery. After the Claimant's hip replacement surgery, there was inadequate attention given to the Claimant's condition. Even when notations were made that the Claimant was having trouble moving her right foot and it was cold – signs of poor circulation -- it does not appear that Dr. Brill was informed or that any action was taken. Two days after the surgery, a MRMC "hospitalist," Dr. Mehra, examined the Claimant and noticed signs of poor circulation, including discoloration of the right toes. Dr, Mehra ordered an immediate arterial Doppler test. The Doppler test is performed by a technician using computer-programmed equipment that measures venous or arterial flow.

Instead of performing an arterial Doppler test, however, the MRMC technician performed a venous Doppler test. The next day, three days after the Claimant's surgery, Dr. Mehra was informed that the venous Doppler test was negative, indicating no problem with circulation in the veins. Dr. Mehra requested an immediate evaluation by a vascular surgeon. The vascular surgeon had an angiogram performed which revealed a right common femoral occlusion. Arterial blood flow to the Claimant's the right leg was blocked. Emergency surgery was performed by Dr. Brill to repair the Claimant's hip dislocation while a vascular surgeon repaired her femoral artery. The repair of the artery came too late. Gangrene had set in and the Claimant's right leg had to be amputated above the knee.

Dr. Brill performed a fourth surgery on the Claimant to repair the dislocation of her hip. That surgery was also unsuccessful. It was subsequently determined to be impractical to fit the Claimant with a prosthetic right leg. Today, the Claimant still has the dislocated prosthetic hip and must always use a wheelchair.

It was later discovered that Dr. Brill performed surgeries on the Claimant in violation of restrictions that had been imposed on his surgical practice as a result of a stroke he had suffered some years earlier. The stroke left Dr. Brill with some weakness in his right arm and hand and caused him to tire more easily. Dr. Brill was restricted to morning surgeries

only, but at least two of the surgeries on the Claimant were performed by Dr. Brill in the afternoon.

An expert medical affidavit prepared in conjunction with the subsequent litigation concluded that the injury to the Claimant's femoral artery should have been detected sooner and the amputation of Claimant's leg could have been avoided. The expert also concluded that Dr. Brill's actions failed to meet the prevailing professional standards of care. An expert nursing affidavit concluded that the nursing staff of MRMC failed to perform appropriate neurovascular assessments, notify physicians of the Claimant's condition, and follow physician orders.

A consulting economist prepared a written analysis for the Claimant's attorneys of the present value of the cost of Claimant's future care. Based on a projected life expectancy of 85 for the Claimant, the present value of future care was estimated to be $618,000 to $1,077,000.

Other than the damage awards paid to the Claimant, which are discussed below, the Claimant's only source of income is Social Security, which pays her $1,097 per month.

LITIGATION HISTORY:

The Claimant sued MRMC, Munroe Regional Health System, Inc. (MRHS), and Dr. Brill in the circuit court for Marion County in May 2008. MRMC is owned and operated by MRHS, which is a component of the Marion County Hospital District. Therefore, a judgment against MRHS is subject to the limited waiver of sovereign immunity provided in Section 768.28, F.S.

In December 2008, the court entered a Consent Final Judgment which adopted the terms of the parties' settlement agreement. The judgment ordered MRHS to pay damages of $450,000 to the Claimant (for herself and as personal representative of the estate of her late husband). The sovereign immunity limit of $200,000 was paid to the Claimant, leaving a balance of $250,000 to be sought via a claim bill. From the $200,000 was deducted attorney's fees of $50,000 and costs of $4,059.91, which left proceeds of $145,940.09 for the Claimant.

The Claimant also settled with Dr. Brill's insurer for $245,000. From this amount was deducted attorney's fees

of $98,000, costs of $41,852.68, Medicare liens of $2,524.79, and a "delayed cost deposit" of $2,500, which left proceeds of $100,122.53 for the Claimant.

CLAIMANT'S POSITION: MRHS is liable for the negligence of its nursing staff and Dr. Brill.

MRHS's POSITION: In the parties' settlement agreement, MRHS did not admit liability for the Claimant's injuries. However, MRHS agreed to support a claim bill in the amount of $250,000 and to cooperate in its legislative approval.

CONCLUSIONS OF LAW: The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether MRHS is liable in negligence for the injuries suffered by the Claimant and, if so, whether the amount of the claim is reasonable.

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement and determining whether they are reasonable under the totality of the circumstances.

Dr. Brill and the nursing staff at MRMC had a duty to the Claimant to exercise a level of skill and care that meets the standard of professional medical care applicable under the circumstances. As the employer of Dr. Brill and the nursing staff, MRHS shared that duty. Dr. Brill and the nursing staff breached their duties of care and the breach of care was the proximate cause of the Claimant loss of her right leg and the loss of her mobility. Therefore, the liability of MRHS was demonstrated.

The amount of the claim bill is fair and reasonable under the circumstances.

LEGISLATIVE HISTORY: This is the first claim bill submitted on behalf of Lois Lacava.

ATTORNEY'S FEES AND LOBBYIST'S FEES: The Claimants' attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They agree to pay the lobbyist's fee out of the attorney's fees. They have not acknowledged their awareness of the provision of the bill that requires costs to be included in the 25 percent figure.

RECOMMENDATIONS:

The Respondent requested that the claim bill be amended to remove the name of a nurse at MRMC, because she was only one of the nurses whose care of the Claimant was faulted in this case. Respondent also requested that the claim bill be amended to reflect the parties' agreement that the award would be paid in two equal installments. These are reasonable requests and I recommend their adoption.

For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Charles Dean
R. Philip Twogood, Secretary of the Senate
Counsel of Record

CS by Health Regulation:
Implements the Special Master's recommendations that the name of the nurse be removed from the whereas clauses and that the award should be paid in two equal installments.