



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/22/18	SM	Favorable
1/23/18	JU	Favorable
2/23/18	AHS	Recommend: Fav/CS
	AP	

January 22, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **PCS/SB 44 (366626)** – Appropriations Subcommittee on Health and Human Services and Senator Jose Rodriguez
HB 6501 – Representative Jackie Toledo
Relief of Christina Alvarez and George Patnode by the Department of Health

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

CURRENT STATUS:

This claim bill was previously filed with the Legislature for the 2004 through 2010 Legislative Sessions. At some point, it was heard by T. Kent Wetherell, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY. Judge Wetherell's special master report from SB 46 (2007), the latest report available, is attached.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report. Additionally, the

prior claim bills on which the attached special master report is based, is effectively identical to claim bill filed for the 2018 Legislative Session. Therefore, the undersigned recommends that Senate Bill 44 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/17/07	SM	Favorable

January 17, 2007

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 46 (2007)** – Senator Dave Aronberg
Relief of Nicholas Patnode

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2.4 MILLION AGAINST THE DEPARTMENT OF HEALTH FOR THE NEGLIGENT MEDICAL CARE PROVIDED TO NICHOLAS PATNODE IN 1998 AT THE COUNTY HEALTH DEPARTMENT/PUBLIC HEALTH CLINIC OPERATED BY THE DEPARTMENT IN MARTIN COUNTY.

FINDINGS OF FACT:

On December 26, 1997, 5-month-old Nicholas Patnode was taken to the Martin County Health Department - Indiantown Clinic (hereafter "the Clinic") by his mother, Christina Alvarez, because of a fever. Nicholas received his primary care through the Clinic, as did the claimants' other two children. Nicholas' regular pediatrician was Dr. Stephen Williams.

Dr. Williams diagnosed Nicholas with an ear infection. He prescribed an antibiotic, and told Ms. Alvarez to bring Nicholas back in 10 days. Nicholas completed the antibiotic, and went in for the follow-up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicholas had recovered from the ear infection.

Two days later, on Thursday, January 8, 1998, Nicholas again ran a fever causing his mother to bring him back to the Clinic. Dr. Williams saw Nicholas and measured his fever at 103.7

degrees. The fever was “without focus,” meaning that there was no apparent cause for the fever. In order to rule out a dangerous bacterial infection, Dr. Williams properly ordered a complete blood count (CBC) and urine test.

The Clinic did not have lab facilities. Lab work, such as the CBC ordered by Dr. Williams, was sent to the lab at Martin Memorial Hospital for analysis. The lab faxed the results of the tests back to the Clinic physician who ordered the tests.

In addition to ordering the CBC, Dr. Williams prescribed Tylenol and Motrin for Nicholas, told his mother to keep cool clothes on him, and to watch him for a rash. He also told her that if there was a rash or if the fever persisted or got worse, she should take Nicholas immediately to the emergency room.

The next day, January 9, 1998, Ms. Alvarez stated that she checked Nicholas' temperature every 4 hours, and that his temperature was “normal” (i.e., 98.6 degrees) throughout the day. At about 4:30 p.m., Nicholas felt hot and had a fever of 100 degrees. Ms. Alvarez gave Nicholas a dose of Tylenol, and when she checked his temperature again an hour later, his fever was up to 101 degrees. At about the same time, Nicholas' father, George Patnode, arrived home from working on a friend's car.

Mr. Patnode and Ms. Alvarez proceeded directly to the Martin Memorial Hospital emergency room with Nicholas. They arrived at the hospital at approximately 6:50 p.m. Ms. Alvarez did not mention during the admission process that Nicholas had been seen by Dr. Williams on the prior day or that he had ordered a CBC test.

The emergency room physician ordered another CBC test, which showed an abnormal white blood cell count. While waiting for test results, Cristina noticed that Nicholas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture (i.e., spinal tap) indicated that Nicholas had pneumococcal meningitis. Nicholas was given intravenous antibiotics, and transferred by ambulance to St. Mary Hospital's pediatric intensive care unit.

Nicholas arrived at St. Mary's at 1:57 a.m., on January 10, 1998. By that time, Nicholas had gone into septic shock. He was removed from life support and died later that morning.

Dr. Williams' Background

Dr. Williams obtained his medical degree in Nigeria in the 1980's. He came to the United States in 1991 after completing an internship in a Nigerian hospital and working for a year in a public health clinic in Nigeria. It took Dr. Williams two tries to pass the exams required for him to practice medicine in the United States. He did a residency program in pediatrics in New York before coming to the Clinic in July 1996. According the Department's website, Dr. Williams was licensed to practice medicine in Florida on July 1, 1996, and his license number is ME70792.

Dr. Williams was granted permanent resident status in the United States in 1996. He worked for the Clinic pursuant to an F-1 visa that required him to provide services in an underserved area for three years. It took Dr. Williams three tries to pass the exam for Board certification in pediatrics. He was Board certified at some point in 1998 after the incident involving Nicholas.

Negligent Medical Care Provided by Dr. Williams

Dr. Williams did not order a rush or "stat" CBC; he ordered a routine CBC. Had Dr. Williams ordered the CBC "stat," the results would have been ready by 5:30 p.m., the day that they were ordered, i.e., January 8, 1998. The more credible expert testimony establishes that, in order to meet standard of care, Dr. Williams should have ordered the CBC "stat" because the test involved a five-month old child who had a fever without a focus.

The tests were completed by the lab at 11:30 p.m., on January 8, 1998. The results were faxed to the Clinic at 12:17 p.m., on January 9, 1998.

The lab results showed that Nicholas had a white blood cell count of 24,900. The normal range for a child of Nicholas' age was between 6,000 to 15,000. Nicholas' elevated white blood cell count was an indication that he might have a serious bacterial infection which, in turn, might develop into bacterial meningitis. In such cases, the standard of care requires immediate treatment with antibiotics.

The Clinic policy in effect at the time required abnormal lab results to be followed-up on with the patient within 24 hours of receipt. Dr. Williams did not review Nicolas' lab results until January 14, 1998, four days after he passed away. His failure to do so violated the clinic policy, and more importantly, fell below the standard of care.

The Clinic had a policy that required the lab to call the physician immediately if the lab results exceeded “panic values” set by the Clinic. The “panic value” set for white blood cell counts was 25,000, which was 100 higher than Nicholas' white blood cell count. The claimants' expert testified that the “panic value” should have been 15,000, which was the reference range published by the American Academy of Pediatrics.

The claimants' expert ultimately opined that had the CBC test been ordered “stat,” or if the regular and actual results that were received by the Clinic at 12:17 p.m. on January 9, 1998, had been promptly reviewed and acted upon by Dr. Williams, then a course of intravenous antibiotics could have been administered in time to save Nicholas' life. The Clinic's expert, while not agreeing that a “stat” CBC was required, agreed that had Nicholas been started on antibiotics at any point up until 4:30 p.m. or so on January 9, 1998, he most likely would not have died.

The Clinic

The Clinic a county health department/public health clinic operated by the Department, with funding support from Martin County. See generally ss. 154.001-.067, F.S. Employees of the Clinic are employees of the Department. s. 154.04(2), F.S.

The Clinic serves Medicaid recipients and other low income patients who do not otherwise have access to health care. It is one of only three facilities in Martin County serving that patient population. In fiscal year 2005-06, the Clinic served more than 19,000 patients and had a budget of \$7.8 million. It now has 137 employees.

The Clinic was only one of only three county health departments in the state that provides prenatal care from pregnancy to birth. The Clinic delivers approximately one-

third of the babies born in Martin County. Pediatric care is provided to many of these children after birth, as was the case with Nicholas and his siblings.

The Clinic is funded with a mix of federal, state, and county funds. It receives approximately \$3.5 million in state funds and \$920,000 (or 12 percent of its budget) from Martin County. As of November 30, 2006, the Clinic had a cash reserve of \$1.3 million and a cash-to-budget ratio of 17.85 percent, which exceeds the 8.5 percent operating reserve required by s. 154.02(5)(a), F.S.

The Claimants

Nicholas' parents, Cristina Alvarez and George Patnode had two children prior to Nicolas. One of the other children is emotionally handicapped, has ADHD, and has pervasive developmental disorder. The other child has ADHD.

Ms. Alvarez and Ms. Patnode had been married for 10 years at the time of Nicholas' death. They separated four days after Nicolas' death, and they divorced in 2000. Both have remarried, and they each have had additional children since Nicholas' death.

George Patnode is 45-years-old. He does not work. He is a disabled veteran, who receives \$724 per month in Social Security disability benefits and \$115 per month from the Veterans Administration. He has been on Social Security disability since 1998. He has been working on an Associate in Arts degree at Indian River Community College for several years. He expects to complete that degree soon and then he intends to pursue a Bachelor's degree at Florida Atlantic University.

Mr. Patnode pays a total of \$1,200 per month in child support, \$600 of which is paid to Ms. Alvarez. He is current on his child support obligations. He is a "recovering alcoholic." He has been sober for 8 years, except for a "brief relapse in 2004," and he is active in Alcoholics Anonymous. He had two criminal offenses in 2002. The offenses were misdemeanor domestic batteries to which he pled no contest and served 30 days in jail.

Ms. Alvarez does not work outside the home. She receives \$982 per month in government benefits for the two children

fathered by Mr. Patnode who are disabled, in addition to the \$600 per month in child support that she receives from Mr. Patnode. She has no history of drug or alcohol abuse.

Relevant Subsequent Events

Dr. Williams no longer works for the Clinic. He left the Clinic in June 1999, after the end of the 3-year term required by his visa. Dr. Williams is now in private practice in the Tampa area.

Dr. Williams was not disciplined by the Clinic as a result of the incident. No disciplinary action was taken against his medical license.

The only policy change that came about at the Clinic as a result of Nicholas' death was the that the white blood cell count "panic value" of 25,000 was changed. Now, the "panic value" for that and other tests depends upon the range established by the lab for the specific test. No Department-wide policy changes were made as a result of the incident.

Source of Funds to Pay this Claim Bill

The bill authorizes and directs payment of this claim out of General Revenue, not the funds of the Department or the Clinic. The Department argues that neither it nor the Clinic has funds available to pay this claim and that payment of the claim from funds earmarked for the Clinic would be contrary to state law and would seriously hamper the Clinic's ability to serve its patients.

The Clinic and other county health departments receive a majority of their state funding from the County Health Department Trust Fund (CHDTF). In the 2006-07 General Appropriations Act, for example, a total of approximately \$980 million of state funds were appropriated for the operation of the 67 county health departments, with \$192 million (19.6%), coming from General Revenue and \$780 million (79.4%) coming from the CHDTF, and the remainder (1%) coming from other sources.

Section 154.02(2), F.S., provides that funds in the CHDTF "shall be expended by the Department of Health solely for the purposes of carrying out the intent and purposes of [Part I of Chapter 154, F.S.]." Nothing in Part I of Chapter 154.02, F.S., addresses payment of claims against county health

departments. Moreover, s. 154.02(3), F.S., provides very specific language regarding the use of funds in the CHDTF; limitations on the transfer of the funds; and specific accounting requirements for those funds. Thus, it does not appear that that funds from the CHDTF could be used to pay this claim, and, under the circumstances, it is appropriate to pay the claim from General Revenue.

If the claim is paid from General Revenue, the Legislature will have to make a policy decision as to whether to concomitantly increase the appropriation of General Revenue to the Department to offset the payment of the claim. Failure to do so will provide a measure of accountability to the Department, whose employee's negligence was the basis of the claim, but it will mean that the other 66 county health departments are effectively subsidizing the payment of this claim since they will receive proportionally less General Revenue than they otherwise would have received.

In my view, it is unlikely that a proportional reduction in General Revenue would have a material negative impact on the operation of the county health departments since the amount of the claim (\$2.4 million) amounts to less than 1.3 percent of the General Revenue (\$192 million) and only 0.25 percent of the total state funds (\$980 million) appropriated to the county health departments in fiscal year 2006-07. Thus, I recommend that the bill be amended to require payment of the claim out of the General Revenue funds appropriated to the Department for the county health departments and not from a separate and additional appropriation of General Revenue to the Department specifically for the payment of this claim.

LITIGATION HISTORY:

In 2000, the claimants filed suit against the Clinic, Dr. Williams, Martin Memorial Hospital, and others involved in the care and treatment of Nicholas from January 8 through 10, 1998. The suit was filed in circuit court in Martin County.

The claimants offered to settle with the Clinic for \$200,000 prior to trial, but the Clinic rejected the offer. Martin Memorial Hospital settled with the claimants for \$35,000. The claims against the other defendants were dismissed, and the case proceeded to trial against the Clinic only.

A jury trial was held in February 2002. The trial judge granted a directed verdict in favor of Mr. Patnode on the issue of his comparative negligence, but the jury had the opportunity to apportion negligence to Ms. Alvarez. The jury returned a \$2.6 million verdict in favor of the claimants, finding the Clinic 100 percent responsible for Nicholas' death. The damages award was for past and future pain and suffering; no economic damages were sought or awarded. The jury apportioned 61.5 percent of the damages (\$1.6 million) to Ms. Alvarez and 38.5 percent (\$1 million) to Mr. Patnode.

The Department's post-trial motions were denied, and a final judgment consistent with the jury verdict was entered on March 26, 2002. The Fourth District Court of Appeal affirmed the final judgment without an opinion on April 30, 2003. The Clinic paid \$200,000 in partial satisfaction of the judgment pursuant to s. 768.28, F.S., in September 2003.

The final judgment reserved jurisdiction to tax costs and attorney's fees, but no subsequent order was entered. The claimant's attorney has advised that no costs are being sought as part of the claim bill.

CLAIMANTS' POSITION:

- The claim is based on a jury verdict that was affirmed on appeal, and the jury verdict should be given full effect because it is supported by the evidence.
- Government entities should be held to the same level of accountability as the private sector, especially in the area of health care.
- The Department had an opportunity to settle this case for \$200,000, but it failed to do so and, therefore, it should be required to pay the full amount awarded by the jury.

DEPARTMENT'S POSITION:

- Nicholas' mother, Ms. Patnode, should be found comparatively negligent for not taking Nicolas to the emergency room sooner, and for not telling the emergency room nurse about seeing Dr. Williams the day before.
- Payment of the claim would hinder the Clinic's ability to provide services to its patients.

- Payment of the claim should come from a separate appropriation of General Revenue because the Clinic and the Department do not have the funds to pay the claim.

CONCLUSIONS OF LAW:

Dr. Williams was an employee of the Department acting within the course and scope of his employment at the time of the incidents giving rise to this claim. As a result, the Department is vicariously liable for his negligence.

Dr. Williams owed a duty to Nicholas and his parents to properly diagnose and treat his medical condition. Dr. Williams breached that duty by failing to follow-up on the blood test that he ordered for Nicholas for the purpose of ruling out a serious bacterial infection. His failure to do so fell below the prevailing professional standard of care and was a proximate cause of Nicholas' death because had he reviewed the results of the test, Dr. Williams would have (or, at least, should have) sent Nicholas to the emergency room for antibiotics.

It is a close question in my mind as to whether Nicholas' mother was comparatively negligent for failing to take Nicholas to the emergency room sooner. On one hand, she was following Dr. Williams advice by giving Nicholas Tylenol and Motrin to reduce his fever and by only taking him to the emergency room if the fever continued despite the medications. On the other hand, it is clear from the expert medical testimony that she could not have been truthful when she testified that Nicholas' temperature was "normal" (i.e., 98.6 degrees) throughout the day on January 9, 1998, and, as a result, she might bear some responsibility for not bringing Nicholas to the emergency room until it was too late. The jury rejected the Department's argument that Nicholas' mother was comparatively negligent and, on balance, I agree with the jury's conclusion on that issue.

The damages awarded by the jury are reasonable. The damage award should, however, be reduced by \$35,000 to reflect the settlement that the claimants received from Martin Memorial Hospital. It would be a windfall to the claimants if the claim bill was not reduced by the amount of that settlement because the jury specifically found that the hospital's lab was not negligent and the claimants' medical expert testified that he had no criticism of the care provided to Nicholas in the hospital's emergency room. Each parent's share of the claim

bill should be reduced by \$17,500 (i.e., half of the \$35,000 settlement) because they split the settlement equally.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The claimants' attorney submitted an affidavit stating that attorney's fees related to this claim bill, inclusive of lobbyist's fees and costs, will be limited to 25 percent of the final claim in accordance with s. 768.28(8), F.S.

LEGISLATIVE HISTORY:

This is the fourth year that this claim has been presented to the Senate. It was first presented in 2004 (SB 26), and then again in 2005 (SB 42) and 2006 (SB 52). No Special Master hearings were held on the prior years' Senate bills. The House Special Master recommended favorable consideration of the claim, as presented in HB 235 in 2004.

OTHER ISSUES:

The bill authorizes and directs payment of \$1.5 million to Ms. Alvarez and \$900,000 to Mr. Patnode, which is consistent with the allocation of damages by the jury and the final judgment. However, the proceeds received to date -- the \$35,000 settlement with Martin Memorial Hospital and the \$200,000 partial satisfaction of the judgment by the Clinic -- have been split equally between Ms. Alvarez and Mr. Patnode after payment of attorney's fees and costs.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that SB 46 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Dave Aronberg
Faye Blanton, Secretary of the Senate
House Claims Committee

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 21, 2018:

The committee substitute:

- Reduces the award amounts to reflect partial payments previously made, specifically the \$200,000 partial satisfaction of the judgement and \$35,000 paid in settlement with the treating hospital, which is consistent with the original Special Master's Final Report from January 17, 2007.