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1 A bill to be entitled

2 An act for the relief of Judge Joseph G. Donahey, Jr., and
3 Tena Donahey, his spouse; providing an appropriation to
4 compensate them for injuries received by Joseph G.
5 Donahey, Jr., and for damages sustained by Mr. and Mrs.
6 Donahey as a result of the medical treatment of Judge
7 Joseph G. Donahey, Jr., by employees of the State of
8 Florida; providing an effective date.

9
10 WHEREAS, Joseph G. Donahey, Jr., a circuit judge of the
11 State of Florida, has for years suffered a continually worsening
12 condition of the back which caused him significant pain and
13 suffering and was beginning to affect his ability to serve as a
14 circuit judge, and

15 WHEREAS, Joseph G. Donahey, Jr., consulted with his
16 personal physician and was referred by his personal physician to
17 a surgeon who was reputed to be skilled in orthopedic surgery,
18 and

19 WHEREAS, Joseph G. Donahey, Jr., consulted with the surgeon
20 and was advised that a surgical procedure could be performed on
21 his back which would probably significantly improve the
22 condition of his back, and

23 WHEREAS, Joseph G. Donahey, Jr., consented to surgery by
24 the surgeon, to be conducted at Tampa General Hospital in Tampa,
25 Florida, and

26 WHEREAS, unknown to Joseph G. Donahey, Jr., the surgeon who
27 was to perform such surgery was an employee of the Board of
28 Regents of the State of Florida, and

29 WHEREAS, the surgery was performed on January 11, 1999, at
30 Tampa General Hospital, and



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31 WHEREAS, a series of events took place which together
32 resulted in Joseph G. Donahey, Jr.'s becoming totally blind
33 during the surgery. As is so often true, any individual event
34 may not have been determinative; however, in combination, the
35 result to Judge Donahey was blindness, and such blindness
36 occurred not through any fault on his part but, undoubtedly, as
37 a result of a series of events attributable to several employees
38 of the Board of Regents. Those events are summarized as follows:

39 (1) The spinal surgery performed on Judge Donahey's back
40 was a complicated and lengthy surgery.

41 (a) Complicated surgery exposes patients to longer bouts
42 of anesthesia, greater blood loss, and decreased blood pressure
43 and, therefore, increases the risk of decreased blood flow and
44 loss of vision due to ischemic optic neuropathy.

45 (b) Joseph G. Donahey, Jr., was advised that such surgery
46 would likely last approximately 4.5 hours.

47 (c) The surgery lasted for approximately 10 hours instead
48 of the estimated 4.5 hours. During this unexpectedly long time,
49 the surgeon who had been employed by Judge Donahey also
50 supervised or performed surgery on two other patients. The
51 supervising anesthesiologist overseeing anesthesia services
52 being performed on Joseph G. Donahey, Jr., likewise at the same
53 time supervised anesthesia services performed on the other two
54 patients.

55 (d) Unknown to Joseph G. Donahey, Jr., such surgery was
56 not performed solely by the surgeon who he thought would perform
57 the surgery but, in fact, was performed in part by a different
58 doctor who was only a resident physician who, as part of his
59 training procedure, was employed by the Board of Regents and
60 received training by observing and participating in surgery



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61 conducted by the surgeon whom Judge Donahey expected to perform
62 the surgery and who was the resident physician's professor.

63 (e) Unknown to Joseph G. Donahey, Jr., the
64 anesthesiologist who was to provide anesthesia services was also
65 a resident student employed by the Board of Regents and, as
66 such, performed anesthesiology services on patients being
67 operated on by Joseph G. Donahey, Jr.'s surgeon and others while
68 under only partial supervision by a board-certified
69 anesthesiologist who was likewise the anesthetist's professor.

70 (2) The risk factors associated with this complicated and
71 lengthy surgery, as known to all of the physicians participating
72 in the surgery, were increased by a combination of factors. The
73 risks, which were not known by Judge Donahey nor conveyed to him
74 by his physicians, included the following:

75 (a) Hypotension anesthesia was employed for Joseph G.
76 Donahey, Jr.'s surgery.

77 (b) Hypotensive anesthesia is a technique employed during
78 spinal surgery in which blood pressure is kept artificially low
79 through the administration of medicine in order to achieve the
80 goal of minimal bleeding.

81 (c) As known to all of the physicians involved in Judge
82 Donahey's surgery, low blood pressure has an additive ischemic
83 effect on blood flow when combined with blood loss, ultimately
84 placing certain vital organs at risk for decreased blood flow.
85 The optic nerve, which stimulates vision through the brain, is
86 part of the organ of the eyes and, during spinal surgery, is at
87 risk for decreased blood flow.

88 (d) Hemoglobin drops with blood loss and, as such, is the
89 parameter monitored, together with systolic and diastolic blood
90 pressures, to ensure adequate blood flow to all parts of the



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91 body during surgery, especially during utilization of the
92 practice of hypotensive anesthesia.

93 (e) Prone body positioning is known to exacerbate the
94 cumulative effects of low hemoglobin and low blood pressures,
95 and Judge Donahey's surgery was performed in the prone position.

96 (f) The resident who provided anesthesia services under
97 the partial supervision of a board-certified anesthesiologist
98 was educated and trained in the increasing cumulative risk of
99 visual loss in the face of low blood pressure blood loss
100 (reduced hemoglobin) and lengthy surgery and, further, knew that
101 increased risk of visual loss may occur due to ischemic optic
102 neuropathy when hemoglobin drops below 10.

103 (g) Testimony indicated that Judge Donahey's hemoglobin
104 was below 10 for about 4 hours.

105 (h) The resident who provided anesthesia services under
106 the partial supervision of a board-certified anesthesiologist
107 was educated and trained in these additive effects and,
108 furthermore, knew that increased risk of visual loss may occur
109 due to ischemic optic neuropathy when systolic blood pressure
110 drops below 100 mm. Hg.

111 (i) Judge Donahey's systolic blood pressure dropped below
112 100 mm. Hg during the same time period in which his hemoglobin
113 was below 10 and, further, Judge Donahey required and received
114 neo-synephrine in order to elevate his systolic blood pressure.

115 (j) The surgeons who performed Judge Donahey's spinal
116 surgery were never directly informed of the low hemoglobin or
117 low systolic blood pressure, since those symptoms were not
118 deemed a risk requiring the interruption of surgery.

119 (k) Despite the knowledge of the risks associated with
120 hypotensive anesthesia and complicated spinal surgery, the



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121 physicians ultimately relied on and employed slightly differing
122 minimum standards for blood pressure and hemoglobin, thereby
123 creating confusion in the context of this specific surgery, and
124 thus increased the overall risk under which Judge Donahey's
125 surgery was performed and, correspondingly, increased the
126 likelihood that ischemic optic neuropathy would occur.

127 (3) The physicians involved in Judge Donahey's surgery all
128 acknowledged that the occurrence of blindness arising from
129 decreased blood flow to the optic nerve, or ischemic optic
130 neuropathy, had increased in the last 5 years preceding Judge
131 Donahey's surgery.

132 (4) Vision problems related to surgery had been reported
133 approximately 120 times in medical literature for this surgery
134 and, on three previous patients, the particular surgeon involved
135 had performed surgery that resulted in unilateral vision loss. A
136 significant portion of these cases involved patients who were in
137 the prone position during lengthy surgery. This problem had been
138 discussed by the surgeon involved, his resident students, and
139 staff and had been discussed at national meetings. Both the
140 literature and the discussions reflected that a significant
141 causative effect was reduced blood pressure and lowered
142 hemoglobin, which would cause damage to the optic nerve.

143 (5) The surgeons who performed Judge Donahey's surgery
144 acknowledged the option of performing the surgery in two stages,
145 first to one level of the spine and then in a second stage to
146 the second level; however, Judge Donahey was never informed of
147 the cumulative risks as described above which were exacerbated
148 by the length of his surgery nor of the option of having his
149 surgery performed in two stages. If Judge Donahey had been



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150 informed of all the risks and of the option of staged surgery,
 151 he would not be blind today, and

152 WHEREAS, in accordance with the Florida Medical Malpractice
 153 Act, Joseph G. Donahey, Jr., joined by his wife, Tena Donahey,
 154 filed a notice of intent to commence litigation and took
 155 statements of the physicians and the anesthesiologists involved
 156 and supported their notice of intent to commence litigation with
 157 the requisite affidavits required by law, and

158 WHEREAS, the Board of Regents of the State of Florida
 159 denied liability as authorized by the Florida Medical
 160 Malpractice Act, and

161 WHEREAS, Joseph G. Donahey, Jr., filed a lawsuit against
 162 the Board of Regents of the State of Florida in the Thirteenth
 163 Judicial Circuit of Hillsborough County, Florida, took discovery
 164 depositions of the physicians involved, obtained the records
 165 relating to the care and treatment involved, and fully complied
 166 with all pretrial requirements of law, and

167 WHEREAS, the Board of Regents formally offered to settle
 168 all claims of the plaintiffs, Joseph G. Donahey, Jr., and Tena
 169 Donahey, by the payment of \$200,000, which represented the
 170 maximum amount that the Board of Regents could be required to
 171 pay Joseph G. Donahey, Jr., and Tena Donahey if they won their
 172 lawsuit, absent the passage of a legislative claim bill; and the
 173 penalty for not accepting that offer would be that Joseph G.
 174 Donahey, Jr., and Tena Donahey would have to pay the attorney's
 175 fees of the Board of Regents if they lost the litigation,
 176 although there is no like provision that would allow the
 177 Donaheys to recover more than the \$200,000 without a claim bill,
 178 no matter what occurred at the trial, and



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179 WHEREAS, Joseph G. Donahey, Jr., and Tena Donahey formally
180 accepted the proposed offer of settlement conditioned upon the
181 release being a standard release of a defendant from liability,
182 and

183 WHEREAS, the Board of Regents submitted for signature to
184 Joseph G. Donahey, Jr., and Tena Donahey a proposed release that
185 would have prevented them from seeking relief from the
186 Legislature, and

187 WHEREAS, Joseph G. Donahey, Jr., and Tena Donahey refused
188 to sign a release containing such a limitation and, thereafter,
189 the Board of Regents tendered a release from which the
190 restriction from seeking legislative relief had been removed,
191 which release was executed to the Board of Regents of the State
192 of Florida and accepted by said board, and

193 WHEREAS, it was the intent of Joseph G. Donahey, Jr., and
194 Tena Donahey that the acceptance of the offer of settlement and
195 the giving and tendering of the release would have the effect of
196 removing financial responsibility from the University of South
197 Florida but would allow Joseph G. Donahey, Jr., and Tena Donahey
198 to make application to the Legislature for equitable relief
199 under the circumstances set forth in this act, and

200 WHEREAS, Joseph G. Donahey, Jr., has suffered significant
201 mental pain and suffering and loss of the enjoyment of his life
202 by reason of his blindness and has continued to serve as a
203 circuit judge with great difficulty, and, upon his retirement
204 from the bench, his earning capacity either as a teacher or as a
205 lawyer will be significantly and adversely affected by his
206 blindness, and



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207 WHEREAS, Joseph G. Donahey, Jr., has incurred economic
208 expenses in his attempt to seek relief from his blindness not
209 compensated by insurance, and

210 WHEREAS, Tena Donahey has suffered an economic loss by
211 reason of her husband's injuries by her need to assist him in
212 his daily life and has also suffered a significant loss of
213 consortium, NOW, THEREFORE,

214
215 Be It Enacted by the Legislature of the State of Florida:

216
217 Section 1. The facts stated in the preamble to this act
218 are found and declared to be true.

219 Section 2. There is appropriated from the General Revenue
220 Fund the sum of \$1 million for the relief of Joseph G. Donahey,
221 Jr., as compensation for damages sustained.

222 Section 3. The Chief Financial Officer is directed to draw
223 a warrant in favor of Joseph G. Donahey, Jr., in the sum of \$1
224 million upon funds in the State Treasury, and the State
225 Treasurer is directed to pay the same out of such funds in the
226 State Treasury.

227 Section 4. The sum of \$500,000 is appropriated from the
228 General Revenue Fund for the relief of Tena Donahey, as
229 compensation for damages sustained.

230 Section 5. The Chief Financial Officer is directed to draw
231 a warrant in favor of Tena Donahey in the sum of \$500,000 upon
232 funds in the State Treasury, and the State Treasurer is directed
233 to pay the same out of such funds in the State Treasury.

234 Section 6. This act shall take effect upon becoming a law.
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