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DATE: January 30, 2004

March 4, 2004

SPECIAL MASTER'S FINAL REPORT

The Honorable Johnnie Byrd
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 235 by Representative Kottkamp
Relief of Cristina Alvarez and George Patnode v. Department of Health

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2,600,000 BASED ON A JURY VERDICT AGAINST THE MARTIN COUNTY HEALTH DEPARTMENT/DEPARTMENT OF HEALTH TO COMPENSATE CRISTINA ALVAREZ AND GEORGE PATNODE FOR THE WRONGFUL DEATH OF THEIR 5 MONTH-OLD SON, NICHOLAS. THE DEPARTMENT HAS PAID THE STATUTORY LIMIT OF \$200,000.

FINDINGS OF FACT:

Nicolas Patnode was born on August 8, 1997. On December 26, 1997, his mother brought him to the Martin County Health Department – Indiantown Clinic due to a fever. At that time, Nicolas was diagnosed with an ear infection by Dr. Williams, Nicolas' regular pediatrician. Dr. Williams prescribed an antibiotic, and asked Cristina Alvarez to bring him back in 10 days. Nicolas completed the antibiotic, and went in for the follow up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicolas had recovered from the ear infection. Two days later, on Thursday, January 8, Nicolas again ran a fever causing his mother to bring him back to the Indiantown Clinic. Dr. Williams again saw Nicolas, who then had a fever of 103.7. Dr. Williams ordered a CBC (complete blood count) and a urine test, prescribed Tylenol, asked his mother to keep cool clothes on him, and to watch for a rash. Dr. Williams then told her that if there was a rash or if the fever persisted or got worse, she should take Nicolas immediately to the emergency room.

The next day, January 9, 1998, Cristina Alvarez stated that she

checked his temperature every 4 hours, and that his temperature was normal throughout the day. At about 4:30 p.m. Nicolas felt hot and had a fever of 100. His mother gave him a dose of Tylenol and checked his temperature again, and it was up to 101. At about the same time, George Patnode, Nicolas's father, and her husband at the time, arrived home from working on a friend's car. They proceeded directly to Martin Memorial Hospital South.

They arrived at Martin Memorial Hospital at 6:50 p.m. A CBC test was ordered, which showed an abnormal white blood count. While waiting for tests, Cristina noticed that Nicolas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture indicated that Nicolas had pneumococcal meningitis. Nicolas was given intravenous antibiotics, and transferred by ambulance to St. Mary's pediatric intensive care unit.

Nicolas arrived at St. Mary's at 1:57 a.m. on January 10th. At this point Nicolas went into septic shock, and was removed from life support later that morning.

The Lab Results at Martin County Health Department

When Cristina Alvarez brought Nicolas back to the lab on January 8, 1998, Dr. Williams correctly noted that he was running a fever without a focus (meaning there was no apparent cause for the fever). In order to rule out a dangerous bacterial infection, he ordered a regular CBC.

The Indiantown Clinic did not have lab facilities. Samples were sent by courier to the Martin Memorial Medical Center, Inc., lab, and the lab would fax the results back to the clinic. On the January 8th visit, Dr. Williams ordered a routine CBC. Once the blood is drawn, various tests are performed and reported back to the ordering physician. The tests were completed at 11:30 p.m. on January 8, 1998, and showed a white blood count of 24,900. The printed lab results showed that they were faxed to the Indiantown Clinic at 12:17 p.m. on January 9th. Had Dr. Williams ordered the CBC 'stat', the results would have been ready by 5:30 p.m. that day. Expert testimony revealed that because this child had a fever without a focus, in order to meet the standard of care, Dr. Williams should have ordered the CBC stat.

At the time, the Martin County Health Department had a policy regarding review of lab results. The policy specifically required lab results to be date stamped upon receipt and routed to the appropriate physician. The policy further required abnormal lab results to be followed-up within 24 hours of receipt. Expert testimony revealed that the normal white blood count for a six-month old baby is no greater than 15,000. Nicolas' white blood count was 24,900. However, Dr. Williams did not review Nicolas' lab report until January 14, 1998, four days after he passed away.

The Martin County Health Department also had a policy with the lab, that the lab would call them immediately if any lab results revealed results that exceeded 'panic values' that were set by the Health Department. The Martin County Health Department had set the 'panic value' on white blood counts at 25,000, 100 less than Nicolas' results of 24,900, thus not qualifying for an immediate call from the lab. The claimant's expert opined that the 'panic value' should have been set at 15,000, which was the reference range published by the American Academy of Pediatrics Red Book.

The claimant's expert ultimately opined that had the CBC test been ordered stat, or if the regular and actual results had been reviewed and acted upon according to policy, then a course of intravenous antibiotics could have been administered in time to save Nicolas' life.

The Parents

Cristina and George Patnode had been married for approximately 10 years and had two children prior to Nicolas, George IV, who is now 13 and Christopher, who is now 12. George IV is emotionally handicapped, has ADHD, and has pervasive developmental disorder. Christopher Patnode has ADHD.

George Patnode is a disabled veteran, who also has other non-military disabilities and is a recovering alcoholic. He testified that he has been 10 years without a drink and is a staunch member of Alcoholics Anonymous. He now works with people with addictions and is in his second year at Indian River Community College. He has been on Social Security disability since 1998.

Cristina and George separated four days after Nicolas' death, and divorced in 2000. Both have remarried. Cristina had another child, Jordan, who is three. George had another two children, Jade and Stone.

Legal Proceedings

Cristina Alvarez and George Patnode filed suit in 2000 in the Martin County Circuit Court, against Dr. Williams; the Department of Children and Family Services; Martin County Health Department; Dr. Polsky (ER doctor); Nurse Andrew Walker (ER nurse); and Martin Memorial Health Systems. Martin Memorial Health Systems settled with the claimants for \$35,000, and was dismissed with prejudice. Dr. Polsky and Nurse Walker were also released from the suit. The Department of Health was substituted for the Department of Children and Family Services. Personnel of county health departments are employed by the Department of Health pursuant to s. 154.04(2), F.S. Prior to trial, claimant's offered to settle the case for \$200,000, which offer the Department of Health declined.

The case went to trial in February of 2002. The trial judge

granted a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence. The jury had the opportunity to apportion liability to the Department of Health (Martin County Health Department), Cristina Alvarez, and the Martin Memorial Medical Center Laboratory. The jury found 100% liability on the Martin County Health Department, and awarded the following: for Cristina Alvarez, \$1,000,000 for past pain and suffering and \$600,000 for future pain and suffering (for a total of \$1.6 million); for George Patnode, \$750,000 for past pain and suffering and \$250,000 for future pain and suffering (for a total of \$1 million), for a total award of \$2,600,000.

The Department's Motion for a New Trial was denied. The Department then appealed to the Fourth District Court of Appeal, arguing that the trial court erred by granting a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence, and that the trial court erred by not allowing the Department to use a specific deposition for impeachment purposes. The Fourth District Court of Appeal issued a per curiam affirmance. The Department has paid the initial \$200,000 as allowed by s. 768.28, F.S.

CLAIMANT'S ARGUMENTS:

- This claim is based on a jury verdict that was affirmed on appeal. The Department offered no evidence or theories that weren't offered at trial.
- The jury verdict is supported by the evidence.
- Governments should be held to the same level of accountability as the private sector, especially in the area of health care.
- The Department of Health should have accepted the claimant's settlement offer, but didn't. As a result, the Department should be made to pay the jury verdict.

RESPONDENT'S ARGUMENTS:

- Cristina Patnode should be 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.
- There was no evidence that the lab transmitted the lab results at the time marked on the lab results.
- Because many labs don't choose to establish 'panic values' at all, Martin County Health Department's establishment of these particular 'panic values' did not fall below the standard of care.

CONCLUSION OF LAW:

Rather than the subjective, traditional "shock the conscience" standard used by courts, for purposes of a claim bill, a respondent that assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by sufficient credible evidence; or that it was influenced by corruption, passion, prejudice, or other improper motives; or that it has not reasonable relation to the damages shown; or that it imposes an overwhelming hardship

on the respondent out of proportion to the injuries suffered; or that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate; or that there are post-judgment considerations that were not known at the time of the jury verdict. The Department of Health failed to demonstrate any of these factors.

I find that there was substantial, competent evidence to show that the medical care provided by Dr. Williams at the Indiantown Clinic of the Martin County Health Department fell below the prevailing professional standard of care, and that as an employee of the Department of Health, the Department is vicariously liable for Dr. Williams' negligence. I further find that Nicolas' death was caused by such negligence, and that the damages are appropriate.

ATTORNEYS FEES:

Claimant's attorney has filed an affidavit affirming that his attorney's fees, inclusive of lobbying fees and costs, will not exceed 25% of the award.

RESPONDENT'S ABILITY TO PAY:

The General Counsel of the Department of Health provided information showing that the Martin County Health Department had a trust fund balance of \$333,195 on December 31, 2003, which represents a 5.29% cash to budget ratio. Section 154.02(5)(a), F.S., requires each County Health Department Trust Fund to maintain an operating reserve consisting of 8.5% of the annual operating budget. The Martin County Health Department receives 14% of its total budget from the Martin County Board of County Commissioners.

RECOMMENDATIONS:

The bill needs to be amended to reflect the Department's payment of \$200,000. The award to each parent should also be reduced by \$100,000 each, as they split the \$200,000 award equally. Based on the foregoing, I recommend that HB 235 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Stephanie Birtman
House Special Master

cc: Rep. Kottkamp, House Sponsor
Sen. Campbell, Senate Sponsor
Jay Kassack, Senate Rules Committee