

1 A bill to be entitled

2 An act relating to the relief of Judge Joseph G. Donahey,
3 Jr., and Tena Donahey, his spouse; providing an
4 appropriation to compensate them for injuries received by
5 Joseph Donahey, Jr., and for damages sustained by Mr. and
6 Mrs. 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

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 periods
42 of anesthetization, greater blood loss, and decreased blood
43 pressure and, therefore, increases the risk of decreased blood
44 flow and loss of vision due to ischemic optic neuropathy.

45 (b) Joseph G. Donahey, Jr., was advised that such surgery
46 would likely last approximately 4-1/2 hours.

47 (c) The surgery lasted for approximately 10 hours instead
48 of the estimated 4-1/2 hours. During this unexpectedly long
49 time, 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 whom he thought would

57 perform the surgery but, in fact, was performed in part by a
58 different doctor who was only a resident physician who, as part
59 of his training procedure, was employed by the Board of Regents
60 and received training by observing and participating in surgery
61 conducted by the surgeon who was expected by Judge Donahey to
62 perform the surgery and who was the resident physician's
63 professor.

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

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

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

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

82 (c) As known to all of the physicians involved in Judge
83 Donahey's surgery, low blood pressure has an additive ischemic
84 effect on blood flow when combined with blood loss, ultimately

85 placing certain vital organs at risk for decreased blood flow.
86 The optic nerve, which stimulates vision through the brain, is
87 part of the organ of the eyes and, during spinal surgery, is at
88 risk for decreased blood flow.

89 (d) Hemoglobin drops with blood loss and, as such, is the
90 parameter monitored, together with systolic and diastolic blood
91 pressures, to ensure adequate blood flow to all parts of the
92 body during surgery, especially during utilization of the
93 practice of hypotensive anesthesia.

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

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

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

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

112 (i) Judge Donahey's systolic blood pressure dropped below

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113 100 mm. Hg during the same time period in which his hemoglobin
114 was below 10, and, further, Judge Donahey required and received
115 neo-synephrine in order to elevate his systolic blood pressure.

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

120 (k) Despite the knowledge of the risks associated with
121 hypotensive anesthesia and complicated spinal surgery, the
122 physicians ultimately relied on and employed slightly differing
123 minimum standards for blood pressure and hemoglobin, thereby
124 creating confusion in the context of this specific surgery, and
125 thus increased the overall risk under which Judge Donahey's
126 surgery was performed and, correspondingly, increased the
127 likelihood that ischemic optic neuropathy would occur.

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

133 (4) Vision problems related to surgery had been reported
134 approximately 120 times in medical literature for this surgery
135 and, on three previous patients, the particular surgeon involved
136 had performed surgery that resulted in unilateral vision loss. A
137 significant portion of these cases involved patients who were in
138 the prone position during lengthy surgery. This problem had been
139 discussed by the surgeon involved, his resident students, and
140 staff and had been discussed at national meetings. Both the

141 literature and the discussions reflected that a significant
142 causative effect was reduced blood pressure and lowered
143 hemoglobin, which would cause damage to the optic nerve.

144 (5) The surgeons who performed Judge Donahey's surgery
145 acknowledged the option of performing the surgery in two stages,
146 first to one level of the spine and then in a second stage to
147 the second level; however, Judge Donahey was never informed of
148 the cumulative risks as described above which were exacerbated
149 by the length of his surgery nor of the option of having his
150 surgery performed in two stages. If Judge Donahey had been
151 informed of all the risks and of the option of staged surgery,
152 he would not be blind today, and

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

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

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

168 WHEREAS, the Board of Regents formally offered to settle

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

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

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

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

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. (1) The sum of \$1 million is appropriated from
 220 the Faculty Practice Plan Revenue affiliated at the University
 221 of South Florida Health Center for the relief of Joseph G.
 222 Donahey, Jr., for damages sustained.

223 (2) The Chief Financial Officer is directed to draw a
 224 warrant in favor of Joseph G. Donahey, Jr., in the sum of \$1

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225 million upon funds in the Faculty Practice Plan Revenue
226 affiliated at the University of South Florida Health Center and
227 to pay the same out of such funds.

228 Section 3. (1) The sum of \$500,000 is appropriated from
229 the Faculty Practice Plan Revenue affiliated at the University
230 of South Florida Health Center for the relief of Tena Donahey
231 for damages sustained.

232 (2) The Chief Financial Officer is directed to draw a
233 warrant in favor of Tena Donahey in the sum of \$500,000 upon
234 funds in the Faculty Practice Plan Revenue affiliated at the
235 University of South Florida Health Center and to pay the same
236 out of such funds.

237 Section 4. This act shall take effect upon becoming a law.