



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/12/07	SM	Favorable
04/11/07	HR	Fav/CS

March 12, 2007

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

Re: **SB 56 (2007)** – Senator Gwen Margolis
HB 915 (2007) – Representative Jack Seiler
Relief of Katherine Selva and Maria Alcobar

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$2,425,000 TO COMPENSATE KATHERINE SELVA FOR DAMAGES RECEIVED WHILE IN THE CARE OF THE CITY OF MIAMI, DEPARTMENT OF FIRE-RESCUE PERSONNEL, IN OCTOBER 1999.

FINDINGS OF FACT:

Introduction

A joint hearing was held on this claim by the House and Senate Special Masters in Miami, Florida, on December 4, 2006.

The Claimant and Her Injuries

Katherine Selva was born on May 3, 1995, 4 weeks prematurely. Two months later, following her first childhood immunizations, she began having seizures. She was transported by emergency vehicles and hospitalized on multiple occasions, treated with appropriate and properly administered medications and oxygen and, each time, until the last time she had a seizure, she recovered.

In 1999, Katherine was an active pre-schooler diagnosed with only mild delays due to epilepsy. She was attending the University of Miami Pre-School Early Intervention Program.

She was verbal, communicating in Spanish and English.

On October 19, 1999, due to care that was significantly below acceptable standards at the time, provided by City of Miami paramedics, Katherine suffered hypoxic ischemic encephalopathy, or serious, permanent damage to her brain cells from oxygen deprivation. She is now in, what has been described as a "permanent persistent vegetative state" with no ability to ambulate, to feed herself, to perform any other activities of daily living for herself, and has only minimal awareness of her surroundings.

Around midnight on October 19, 1999, Katherine, then 4 years old, woke up needing to go to the bathroom. Her mother took her to the bathroom, then put her back to bed. Approximately an hour later, Katherine started making sounds familiar to her parents as symptomatic of her going into a convulsion. Her parents, Aldo and Maria Selva, turned her on her side to keep her from strangling and waited approximately 5 minutes, as previously instructed by doctors. At 1:10 a.m., they telephoned for rescue personnel and two paramedics responded at 1:28 a.m. They found Katherine actively seizing, administered two milligrams of Valium to her and, at 1:30 a.m., called for another vehicle that they thought was better equipped to transport Katherine to the hospital.

At 1:43 a.m., the second vehicle arrived and Henry Rodriguez was the paramedic in charge of patient care and record-keeping. In his report of the response, Mr. Rodriguez identified the other paramedic in the back of the truck incorrectly, naming, at first, a person who was not working that shift. The matter was of some concern, not only because the records were incorrect, but also because the standard of care required that two members of the rescue team be in the back with the patient. The Assistant Fire Chief later identified Ricardo Mayan as the second paramedic. Katherine's mother, Maria, rode in the front of the rescue truck and her father, Aldo, followed behind in their car, with their infant daughter, Karenlyn.

Mr. Rodriguez's report was also incorrect and inconsistent in describing the care provided to Katherine on the way to the hospital, stating that attempts to insert an intravenous (IV) line failed but, on the other hand, that the medication given

was "Valium IV." The narrative, in another part of the report states that "3 MG. OF VALIUM" was given to Katherine in the rescue vehicle, while a computer-generated treatment report shows "1 MG [by] Henry R. Rodriguez." Mr. Mayan later stated, in his deposition, that they were unable to insert the IV and that the IV was started at the hospital.

The Valium was passed off to the second team of paramedics by the first responders in case more needed to be administered on the way to the hospital. It was apparently given intramuscularly. In 1999, none of these paramedics had been trained that the standard of care for faster control of seizures was to administer the drug rectally if an IV failed, and that the maximum dose was ten milligrams. In his deposition, Mr. Rodriguez indicated that he did not know and, therefore, did not take into account the method of delivery or amount of the Valium given by the first team.

The incident report also indicates that the paramedics were most likely unable to start an IV because they were using the wrong needle size for a young child. The hospital staff apparently had no difficulty starting the IV after Katherine arrived at Jackson Memorial.

Because Valium can affect respiration, the standard of care required monitoring and treating signs of declining blood oxygen saturation. In the rescue vehicle, the paramedics administered oxygen to Katherine using a standard oxygen mask, even though the vehicle was equipped with a pediatric bag valve mask. The paramedics were not trained to use the bag valve mask to force oxygen into the blood stream faster, although that was the standard of care in 1999 for treating a seizing child, and was consistent with the care rendered to Katherine a few months earlier when Miami-Dade paramedics responded and successfully treated her for a seizure and a similar hypoxic event.

The rescue truck was not equipped, as it should have been, with a pulse oximeter to measure carbon dioxide or an oxygen saturation monitor that could have been clipped on Katherine's finger to detect declining levels of oxygen in her blood. Visual monitoring of her changing skin color was adversely affected by poor lighting due to a defective interior florescent light in the back of the truck, as indicated by a

subsequent vehicle repair record. Mr. Rodriguez reported Katherine's skin "warm" by touch at 1:54 a.m., but that was probably inaccurate given her condition 6 minutes later.

When she arrived at Jackson Memorial Hospital at 2:00 a.m., Katherine's skin color was bluish, her oxygen saturation level was 35 percent, and her heart rate was 210 beats per minute, which was subsequently described as fluttering like a hummingbird. The hospital team began forced oxygenation using a bag valve mask and, by 2:20 a.m., her oxygen was up to 85 percent and heart rate down to 169. At 2:30 a.m., she was continuing to seize but her oxygen was up to 95 percent and, by 3:07 a.m., her oxygen was still at 95 percent and her heart rate down to 145.

LITIGATION HISTORY:

A suit for damages was filed in 2001. A mediated settlement for \$2,625,000, with a plan for allocation of the funds approved by a court-appointed guardian ad litem, was adopted by the court on December 2, 2005. The settlement was approved by the City of Miami City Commission, including an agreement to actively support a claim bill for \$2,425,000 after payment of the sovereign immunity limit of \$200,000. The settlement was adopted in an Agreed Final Judgment on October 10, 2006.

Under the settlement allocation plan, from the first \$200,000, \$88,897 was paid to one law firm for costs; \$33,802.37 was paid to a second law firm for costs; \$20,000 was held in reserve for future costs and for fees associated with establishing and maintaining the guardianship; and the remaining \$57,300.60 (\$28,650.30 each) was divided between the Agency for Health Care Administration, as partial payment of a Medicaid lien that is now approximately \$900,000, and the special needs trust established for Katherine's future medical and dental care that is not available through Medicaid or other governmental programs. The trust has a provision that funds, if any, remaining after her death and, after Medicaid and any other government liens are satisfied, will pour over into a trust for her younger sister, Karenlyn. Katherine's parents, who are now divorced, waived any personal claims to the proceeds for their pain and suffering, in favor of having all funds placed in the special needs trust.

The court-approved agreement also provides for the

distribution of funds appropriated by a claim bill. Attorneys for each of the parents will share 25 percent, then Medicaid or any other governmental assistance liens in excess of the amount of the prior payment will be satisfied, and the balance will be placed in the same special needs trust.

CLAIMANT'S AND CITY OF MIAMI'S POSITION:

The Claimant and the City actively support the passage of the claim bill for Katherine Selva. The City's current reserves for paying claims are over \$16 million for the fiscal year that ends on September 30, 2007. The City has subsequently sanctioned Henry Rodriguez for failing to document accurately patient information in several incidents, failing to follow proper patient assessment procedures and department protocols, and negligent, incompetent, and inefficient performance of his duties. Following a suspension, he was reassigned to duties that do not involve patient care.

CONCLUSIONS OF LAW:

The City of Miami rescue personnel owed and breached their duty to Katherine Selva to provide timely, appropriate care and to render medical treatment that met the standard of care for treating a child having a seizure in 1999.

The breach was caused by inadequate training, inadequate and improperly maintained equipment, and the negligence of the City of Miami employees. That breach of duty caused extensive permanent damages to Katherine Selva.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

In compliance with the limit set forth in Section 768.28(8), Florida Statutes, the attorneys' fees are 25 percent, or \$606,250.00, and will include a 5 percent lobbyist's fee.

RECOMMENDATIONS:

For the reasons set forth above, I recommend Senate Bill 56 (2007) be reported FAVORABLY.

Respectfully submitted,

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Eleanor M. Hunter
Senate Special Master

cc: Senator Gwen Margolis
Representative Jack Seiler
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law