

By Senator Jones

13-116-07

1 A bill to be entitled

2 An act relating to the relief of Judge Joseph

3 G. Donahey, Jr., and Tena Donahey, his spouse;

4 providing an appropriation to compensate them

5 for injuries received by Joseph Donahey, Jr.,

6 and for damages sustained by Mr. and Mrs.

7 Donahey as a result of the medical treatment of

8 Judge Joseph G. Donahey, Jr., by employees of

9 the State of Florida; providing an effective

10 date.

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12 WHEREAS, Joseph G. Donahey, Jr., a circuit judge of the

13 State of Florida, has for years suffered a continually

14 worsening condition of the back which caused him significant

15 pain and suffering and was beginning to affect his ability to

16 serve as a circuit judge, and

17 WHEREAS, Joseph G. Donahey, Jr., consulted with his

18 personal physician and was referred by his personal physician

19 to a surgeon who was reputed to be skilled in orthopedic

20 surgery, and

21 WHEREAS, Joseph G. Donahey, Jr., consulted with the

22 surgeon and was advised that a surgical procedure could be

23 performed on his back which would probably significantly

24 improve the condition of his back, and

25 WHEREAS, Joseph G. Donahey, Jr., consented to surgery

26 by the surgeon, to be conducted at Tampa General Hospital in

27 Tampa, Florida, and

28 WHEREAS, unknown to Joseph G. Donahey, Jr., the surgeon

29 who was to perform such surgery was an employee of the Board

30 of Regents of the State of Florida, and

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1 WHEREAS, the surgery was performed on January 11, 1999,
2 at Tampa General Hospital, and

3 WHEREAS, a series of events took place which together
4 resulted in Joseph G. Donahey, Jr.'s becoming totally blind
5 during the surgery. As is so often true, any individual event
6 may not have been determinative; however, in combination, the
7 result to Judge Donahey was blindness, and such blindness
8 occurred not through any fault on his part but, undoubtedly,
9 as a result of a series of events attributable to several
10 employees of the Board of Regents. Those events are summarized
11 as follows:

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

14 (a) Complicated surgery exposes patients to longer
15 bouts of anesthesia, greater blood loss, and decreased blood
16 pressure and, therefore, increases the risk of decreased blood
17 flow and loss of vision due to ischemic optic neuropathy.

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

20 (c) The surgery lasted for approximately 10 hours
21 instead of the estimated 4-1/2 hours. During this unexpectedly
22 long time, the surgeon who had been employed by Judge Donahey
23 also supervised or performed surgery on two other patients.
24 The supervising anesthesiologist overseeing anesthesia
25 services being performed on Joseph G. Donahey, Jr., likewise
26 at the same time supervised anesthesia services performed on
27 the other two patients.

28 (d) Unknown to Joseph G. Donahey, Jr., such surgery
29 was not performed solely by the surgeon whom he thought would
30 perform the surgery but, in fact, was performed in part by a
31 different doctor who was only a resident physician who, as

1 part of his training procedure, was employed by the Board of
2 Regents and received training by observing and participating
3 in surgery conducted by the surgeon who was expected by Judge
4 Donahey to perform the surgery and who was the resident
5 physician's professor.

6 (e) Unknown to Joseph G. Donahey, Jr., the
7 anesthesiologist who was to provide anesthesia services was
8 also a resident student employed by the Board of Regents and,
9 as such, performed anesthesiology services on patients being
10 operated on by Joseph Donahey's surgeon and others while under
11 only partial supervision by a board-certified anesthesiologist
12 who was likewise the anesthetist's professor.

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

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

20 (b) Hypotensive anesthesia is a technique employed
21 during spinal surgery in which blood pressure is kept
22 artificially low through the administration of medicine in
23 order to achieve the goal of minimal bleeding.

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

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1 (d) Hemoglobin drops with blood loss and, as such, is
2 the parameter monitored, together with systolic and diastolic
3 blood pressures, to ensure adequate blood flow to all parts of
4 the body during surgery, especially during utilization of the
5 practice of hypotensive anesthesia.

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

10 (f) The resident who provided anesthesia services
11 under the partial supervision of a board-certified
12 anesthesiologist was educated and trained in the increasing
13 cumulative risk of visual loss in the face of low blood
14 pressure blood loss (reduced hemoglobin) and lengthy surgery
15 and, further, knew that increased risk of visual loss may
16 occur due to ischemic optic neuropathy when hemoglobin drops
17 below 10.

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

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

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

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

5 (k) Despite the knowledge of the risks associated with
6 hypotensive anesthesia and complicated spinal surgery, the
7 physicians ultimately relied on and employed slightly
8 differing minimum standards for blood pressure and hemoglobin,
9 thereby creating confusion in the context of this specific
10 surgery, and thus increased the overall risk under which Judge
11 Donahey's surgery was performed and, correspondingly,
12 increased the likelihood that ischemic optic neuropathy would
13 occur.

14 (3) The physicians involved in Judge Donahey's surgery
15 all acknowledged that the occurrence of blindness arising from
16 decreased blood flow to the optic nerve, or ischemic optic
17 neuropathy, had increased in the 5 years immediately preceding
18 Judge Donahey's surgery.

19 (4) Vision problems related to surgery had been
20 reported approximately 120 times in medical literature for
21 this surgery and, on three previous patients, the particular
22 surgeon involved had performed surgery that resulted in
23 unilateral vision loss. A significant portion of these cases
24 involved patients who were in the prone position during
25 lengthy surgery. This problem had been discussed by the
26 surgeon involved, his resident students, and staff and had
27 been discussed at national meetings. Both the literature and
28 the discussions reflected that a significant causative effect
29 was reduced blood pressure and lowered hemoglobin, which would
30 cause damage to the optic nerve.

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1 (5) The surgeons who performed Judge Donahey's surgery
2 acknowledged the option of performing the surgery in two
3 stages, first to one level of the spine and then in a second
4 stage to the second level; however, Judge Donahey was never
5 informed of the cumulative risks as described above which were
6 exacerbated by the length of his surgery nor of the option of
7 having his surgery performed in two stages. If Judge Donahey
8 had been informed of all the risks and of the option of staged
9 surgery, he would not be blind today, and

10 WHEREAS, in accordance with the Florida Medical
11 Malpractice Act, Joseph G. Donahey, Jr., joined by his wife,
12 Tena Donahey, filed a notice of intent to commence litigation
13 and took statements of the physicians and the
14 anesthesiologists involved and supported their notice of
15 intent to commence litigation with the requisite affidavits
16 required by law, and

17 WHEREAS, the Board of Regents of the State of Florida
18 denied liability as authorized by the Florida Medical
19 Malpractice Act, and

20 WHEREAS, Joseph G. Donahey, Jr., filed a lawsuit
21 against the Board of Regents of the State of Florida in the
22 Thirteenth Judicial Circuit of Hillsborough County, Florida,
23 and took discovery depositions of the physicians involved and
24 obtained the records relating to the care and treatment
25 involved and fully complied with all pretrial requirements of
26 law, and

27 WHEREAS, the Board of Regents formally offered to
28 settle all claims of the plaintiffs, Joseph G. Donahey, Jr.,
29 and Tena Donahey, by the payment of \$200,000, which
30 represented the maximum amount that the Board of Regents could
31 be required to pay Joseph G. Donahey, Jr., and Tena Donahey if

1 they won their lawsuit, absent the passage of a legislative
2 claim bill; and the penalty for not accepting that offer would
3 be that Joseph G. Donahey, Jr., and Tena Donahey would have to
4 pay the attorney's fees of the Board of Regents if they lost
5 the litigation, although there is no like provision that would
6 allow the Donaheys to recover more than the \$200,000 without a
7 claim bill, no matter what occurred at the trial, and

8 WHEREAS, Joseph G. Donahey, Jr., and Tena Donahey
9 formally accepted the proposed offer of settlement conditioned
10 upon the release being a standard release of a defendant from
11 liability, and

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

15 WHEREAS, Joseph and Tena Donahey refused to sign a
16 release containing such a limitation and, thereafter, the
17 Board of Regents tendered a release from which the restriction
18 from seeking legislative relief had been removed, which
19 release was executed to the Board of Regents of the State of
20 Florida and accepted by the board, and

21 WHEREAS, it was the intent of Joseph G. Donahey, Jr.,
22 and Tena Donahey that the acceptance of the offer of
23 settlement and the giving and tendering of the release would
24 have the effect of removing financial responsibility from the
25 University of South Florida but would allow Joseph G. Donahey,
26 Jr., and Tena Donahey to make application to the Legislature
27 for equitable relief under the circumstances set forth in this
28 act, and

29 WHEREAS, Joseph G. Donahey, Jr., has suffered
30 significant mental pain and suffering and loss of the
31 enjoyment of his life by reason of his blindness and has

1 continued to serve as a circuit judge with great difficulty,
2 and, upon his retirement from the bench, his earning capacity
3 either as a teacher or as a lawyer will be significantly and
4 adversely affected by his blindness, and

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

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

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. The facts stated in the preamble to this
16 act are found and declared to be true.

17 Section 2. (1) The sum of \$1 million is appropriated
18 from the Faculty Practice Plan Revenue affiliated at the
19 University of South Florida Health Center for the relief of
20 Joseph G. Donahey, Jr., for damages sustained.

21 (2) The Chief Financial Officer is directed to draw a
22 warrant in favor of Joseph G. Donahey, Jr., in the sum of \$1
23 million upon funds in the Faculty Practice Plan Revenue
24 affiliated at the University of South Florida Health Center
25 and to pay the same out of such funds.

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

30 (2) The Chief Financial Officer is directed to draw a
31 warrant in favor of Tena Donahey in the sum of \$500,000 upon

