



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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| DATE     | COMM | ACTION          |
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| 12/31/14 | SM   | Fav/1 amendment |
|          | JU   |                 |
|          | AHS  |                 |
|          | AP   |                 |

December 31, 2014

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 80** – Senator Anitere Flores  
Relief of Michael Rardin

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$2,000,000 AGAINST THE NORTH BROWARD HOSPITAL DISTRICT FOR AN INCIDENT OF MEDICAL MALPRACTICE.

#### FINDINGS OF FACT:

In 2011, Michael Rardin was a 42-year old construction company employee. He acted in a general contractor role on high value projects and earned a high salary. On July 14, 2011, Mr. Rardin went to his primary care physician complaining of fatigue and shortness of breath. His primary care physician sent Mr. Rardin to the emergency room. Mr. Rardin was triaged as a priority 1/critical patient. Mr. Rardin was seen by Dr. Susan Nesselroth at 2:04 pm. Dr. Nesselroth noted his complaints and ordered an oxygen saturation monitor. Mr. Rardin had an oxygen saturation level of 53%. A normal oxygen saturation level is 95% or greater. Dr. Nesselroth ordered a non-rebreather mask with supplemental oxygen. Mr. Rardin was to be monitored in the emergency department.

Mr. Rardin was not intubated nor placed on a centrally monitored respiratory or cardiac monitor. A chest x-ray was then performed, indicating a left lower lobe infiltrate, and Dr. Nesselroth's diagnostic impression was left lower lobe

pneumonia and hypoxia. Over the next two hours, Mr. Rardin's condition deteriorated.

At 3:57 pm, Dr. Nesselroth was called to Mr. Rardin's bedside. A nurse noted increased respiratory distress and difficulty in arousing Mr. Rardin. Dr. Nesselroth evaluated Mr. Rardin as unresponsive, diaphoretic, and with agonal respirations. Dr. Nesselroth decided to intubate Mr. Rardin. There were two attempts to intubate Mr. Rardin. The first attempt at 4:05 pm, resulted in an "esophageal intubation" where oxygen was being delivered to his stomach rather than his lungs. Mr. Rardin became asystolic. A code was called and CPR and other life saving efforts were administered. By the time the physicians and staff successfully intubated Mr. Rardin, a sufficient period of time had passed with inadequate oxygen to the brain, resulting in a serious and permanent hypoxic brain injury. The second intubation attempt occurred at 4:15 pm, resulting in approximately 10 minutes of time of no heart rate, no blood pressure, and no oxygen being delivered to Mr. Rardin's brain.

The Rardins filed a lawsuit against the North Broward Hospital District. The minor children were subsequently dropped from the lawsuit and the matter continued with Mr. and Mrs. Rardin as plaintiffs. North Broward Hospital District, which owns and operates North Broward Medical Center, reached a settlement agreement with the Rardins by mediation in the amount of \$2.2 million dollars, \$200,000 of which has been paid in partial satisfaction of the final judgment. As a condition of the settlement, North Broward Hospital District agreed to support passage of a claim bill. If the bill passes, the claim will be paid through a combination of money the North Broward Hospital District has set aside for the payment of claims and insurance.

The Rardins also settled a claim against Dr. Nesselroth for an undisclosed amount. Counsel for the claimants did not disclose the amount of the settlement to the Special Master, citing a confidentiality agreement.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the North Broward Hospital District was liable in negligence for the damages suffered by Michael and Patricia Rardin. The undersigned finds that the staff of the North Broward Hospital District had a duty to treat Mr. Rardin

according to the standard of care and that it failed to do so. In waiting approximately two hours to intubate, despite an initial evaluation indicating critical oxygen values, Dr. Nesselroth and the hospital staff violated the standard of care. The failure of the staff was the cause of Mr. Rardin's injuries.

Due to the failure of hospital personnel to properly monitor and timely intubate Mr. Rardin, he suffers from a permanent brain injury, including but not limited to visual disturbances, short term memory loss and severe depression. Mr. Rardin's catastrophic injuries have rendered him unable to work. Furthermore, Mr. Rardin's injuries render him unable to provide the services, comfort, attention, and affection that he otherwise would have provided to his wife, Patricia Rardin, and his two minor children, Kayla and Emily Rardin. The amount of damages agreed to by the parties is reasonable.

ATTORNEYS FEES:

Mr. Rardin's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature. Lobbyist fees are included with the attorney fees.

RECOMMENDATIONS:

SB 80 names the Rardin's children as claimants when they were dropped from the litigation. The attached amendment names only Michael and Patricia Rardin as the claimants, removing the names of the children. The undersigned recommends that the bill be reported favorably with the suggested amendment.

Respectfully submitted,

L. Michael Billmeier, Jr.  
Senate Special Master

cc: Debbie Brown, Secretary of the Senate