



STORAGE NAME: h6501a.CJC

DATE: 10/19/2017

October 19, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6501 - Representative Toledo
Relief/Cristina Alvarez and George Patnode/Department of Health

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$2,400,000 BASED ON A JURY VERDICT IN THE AMOUNT OF \$2,600,000 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:

Nicholas 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, Nicholas was diagnosed with an ear infection by Dr. Williams, Nicholas's regular pediatrician. Dr. Williams prescribed an antibiotic, and asked Cristina Alvarez to bring him back in 10 days. Nicholas completed the antibiotic, and went in for the follow-up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicholas had recovered from the ear infection. Two days later, on Thursday, January 8, Nicholas again ran a fever causing his mother to bring him back to the Indiantown Clinic. Dr. Williams again saw Nicholas, who then had a fever of 103.7° F. 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 Nicholas 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. Nicholas felt hot and had a fever of 100°F. His mother gave him a dose of Tylenol and checked his temperature again, and it was up to 101°F. At about the same time, George Patnode, Nicholas'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 Nicholas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture indicated that Nicholas had pneumococcal meningitis. Nicholas was given intravenous antibiotics, and was transferred by ambulance to St. Mary's pediatric intensive care unit.

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

The Lab Results at Martin County Health Department

When Cristina Alvarez brought Nicholas back to the clinic 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 8 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 cell count of 24,900. The printed lab results showed that they were faxed to the Indiantown Clinic at 12:17 p.m. on January 9. 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. Nicholas's white blood count was 24,900. However, Dr. Williams did not review Nicholas's 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 more than Nicholas's 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 Nicholas's life.

The Parents and Family

Cristina and George Patnode had been married for approximately 10 years and had two children prior to Nicholas, George IV and Christopher. 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.

Cristina and George separated four days after Nicholas's death and divorced in 2000. Both remarried. Cristina had another child, Jordan; George had another two children, Jade and Stone.

LITIGATION HISTORY:

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 POSITION:

Claimant argues the jury verdict is supported by the evidence and should be given full effect.

RESPONDENT'S POSITION:

The Department argues as follows:

- Cristina Patnode should be comparatively negligent for not taking Nicholas 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 do not 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; that it was influenced by corruption, passion, prejudice, or other improper motives; that it has not reasonable relation to the damages shown; that it imposes an overwhelming hardship on the respondent out of proportion to the injuries suffered; 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 has 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 Nicholas's death was caused by such negligence, and that the damages are appropriate.

ATTORNEY'S/
LOBBYING FEES:

Claimants' attorney has an agreement with Claimants to take a fee of 25% of Claimants' total recovery. Claimants' attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$2,080.64.

LEGISLATIVE HISTORY:

This is the eighth session this claim has been presented to the Legislature. It was initially filed in 2004 as House Bill 235 by Representative Kottkamp and Senate Bill 26 by Senator Campbell. Last session, CS/HB 6553 (2017) passed the House by a vote of 111-4 but later died in Senate Appropriations.

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 6501 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Toledo, House Sponsor
Senator Rodriguez, Senate Sponsor
Tom Cibula, Senate Special Master