THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
404H The Capitol

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DATE	COMM	ACTION
3/17/21	SM	Favorable
3/22/21	JU	Fav/CS
	HP	
	RC	

March 17, 2021

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 26** – Senator Cruz
HB 6511 – Representative DiCeglie
Relief of Estate of Crystle Marie Galloway by the Hillsborough County Board of County Commissioners

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $2,450,000. THIS AMOUNT IS THE REMAINING BALANCE OF A $2,750,000 SETTLEMENT AGREEMENT REGARDING THE ALLEGED NEGLIGENCE OF EMPLOYEES OF HILLSBOROUGH COUNTY, WHICH RESULTED IN THE DEATH OF CRYSTLE MARIE GALLOWAY

FINDINGS OF FACT:

The Events of July 4, 2018

On the morning of July 4, 2018, Ms. Nicole Black found her daughter, Ms. Crystle Marie Galloway, in distress. At 3:02 am, Ms. Black dialed 911 to request an ambulance for Ms. Galloway.[1]

In conversation with the Hillsborough County Emergency Dispatch Center (EDC) employee, Ms. Black described that she found Ms. Galloway on the floor "drooling from the mouth, lips getting bigger…" and generally unresponsive.[2] The EDC employee created a Computer Aided Dispatch (CAD)

[1] 911 Call Recording 1 (Jul. 3, 2018).
[2] *Id*.

Operations Report that reflected the above details, and described the "key question" as "Stroke (CVA) / Transient Ischemic Attack (TIA).[3]

At 3:05 a.m., Hillsborough County Fire Rescue (HCFR) Rescue 43 (R43) and Squad 1 units were dispatched to the scene to assist Ms. Galloway, and were informed by a "tear and go sheet" that the nature of the call was "stroke/CVA/TIA."[4] Lieutenant Mike Morris was the officer in charge of, and Fire Medic Martin was the junior paramedic assigned to R43. Acting Lieutenant Courtney Barton and Fire Medic Justin Sweeney were assigned to Squad 1.

Hillsborough County Sheriff's Office personnel were also dispatched to the scene. The sheriff's deputies arrived at the scene first, and interviewed Ms. Black and Ms. Galloway. They learned that Ms. Galloway had recently given birth by cesarean section,[5] was complaining of a headache and sensitivity to light, and had not consumed any medication or alcohol. Either the sheriff's deputies, Ms. Black, or both, ultimately relayed this information to Acting Lieutenant Barton and Lieutenant Morris after their arrivals on the scene.[6]

According to Deputy Grace, he observed the HCFR medics interact with Ms. Galloway, who cried hysterically and complained of a headache and stomachache to them.[7]

HCFR personnel arrived at the scene at 3:17 a.m. Medic Sweeney reached Ms. Galloway first. He found her lying in bed, covered by a blanket; he asked her if she wanted to go to the hospital and Ms. Galloway nodded to indicate "yes."[8] Ms. Galloway rose from the bed, and Medic Sweeney assisted

[3] Hillsborough County Emergency Dispatch Center, *CAD Operations Report: Call Number 1807-064728*, July 4, 2018. A second CAD Report was generated as a result of two 911 calls made regarding Ms. Galloway. The second call and related CAD report were aborted because it was determined that Ms. Black was on another phone line with a different dispatcher. *See*, Hillsborough County Emergency Dispatch Center, CAD Operations Report: Call Number 1807-064729 (July 4, 2018).
[4] EO Case No. 447-E8, Barton Interview, 27 (Aug. 6, 2018). EO Case No. 448-18, Morris Interview, 38-39 (Aug. 6, 2018).
[5] Ms. Galloway gave birth to her third child, Jacob Aiden Flowers, via Cesarean section on June 27, 2018.
[6] Arbitrator deposition of Morris, 388 (Mar. 18, 2019). Barton Statement for Incident 55108 (2018). FMCS Case No.: 191115-01560, Interview of Deputy Grace re: John Morris, 6-7 (Aug. 9, 2018); FMCS Case No.: 191115-01560, Interview of Deputy Lamb re: John Morris, 7 (Aug. 9, 2018).
[7] Interview of Deputy Grace, 13, (Aug. 9, 2018).
[8] Sweeney Deposition, 17 (Feb. 18, 2020).

Ms. Galloway to a nearby stair chair device;[9] before Ms. Galloway sat down on the stair chair device, she retched. An HCFR responder handed Ms. Galloway an emesis bag from the Lifepak 15.[10] HCFR employees then placed Ms. Galloway into the stair chair, helped to transport her downstairs, and assisted her into Ms. Black's car. Ms. Black and Ms. Galloway then left the scene. R43 and Squad 1 units ended the call and went back into service at approximately 3:30 a.m. HCFR responders testified that they treated this call as a "lift-assist" or citizen assist, wherein transport via ambulance was not requested or required.[11]

During the call to Ms. Galloway's home, Ms. Galloway was able to respond non-verbally to commands and to take a few short steps with the assistance of another person.

Ms. Galloway's In-Patient Care

Ms. Black began to drive Ms. Galloway to Brandon Urgent Care Center—a standalone E.R. with no neurosurgical capabilities. While en route, Ms. Galloway began to suffer seizures. Employees of the Brandon Urgent Care Center began to treat Ms. Galloway at approximately 3:55 a.m., conducted a CT scan of her brain, diagnosed her with acute subarachnoid hemorrhage (stroke), and at approximately 5:00 a.m., requested to transfer her to Tampa General Hospital, because "services were not available at this [Brandon Urgent Care Center] Facility."[12] Ms. Galloway was intubated and then lifeflighted to Tampa General Hospital, where she arrived at approximately 6:00 a.m. Ms. Galloway was ultimately admitted as an inpatient to Tampa General Hospital's neuroscience ICU at approximately 12:00 pm.[13] Ms. Galloway underwent diagnosis cerebral angiogram and ultimately had surgery as a course of her treatment at Tampa General.

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[9] EO Case No. 449-18, Sweeney Interview, 42-45 (Aug. 6, 2018). Medic Martin brought the stair chair device upstairs at the instruction of Lieutenant Morris.

[10] EO Case No. 447-E8, Barton Interview, 30 (Aug. 6, 2018). A Lifepak 15 is a piece of medical equipment that is used to obtain vitals, such as blood pressure and pulse rate. It can also perform EKGs. Barton Deposition, 59-60 (Feb. 18, 2020).

[11] Arbitrator Deposition of Morris at 410, 412 (Mar. 18, 2019). EO Case No. 449E-18, Sweeney Interview at 89-90 (Aug. 6, 2018). EO Case No. 45-E8, Martin Statement re: Incident 0055108, (July 7, 2018).

[12] Brandon Regional ER patient records for Crystle Galloway at 2 (July 4, 2018). *See also*, *id*. at 7 (Stating the "[c]ase was discussed with neurosurgeon who at the moment stated that the patient did not need to be intubated…and to be transferred to facility who is neuro interventional capable").

[13] Tampa General Hospital patient records for Crystle Galloway, 2-3 (July 4, 2018).

On July 9, 2018, Ms. Galloway died. She was 30 years old.[14]

HCFR's Electronic Patient Care Records

Both HCFR units that responded to Ms. Galloway's home created an electronic patient care record (ePCR). The ePCR created by Squad 1 classified the call as a "non-transport cancel" and the narrative further states that there was "no medical attention needed." The ePCR created by R43 classified the call as a "non-transport no patient found." R43's ePCR narrative states that the responders found that there was no medical complaint, but that the patient needed help getting down from the third story of her home into her mother's vehicle. It further states that there was "no medical patient and no need for transport or evaluation from HCFR units."

HCFR Policies and Procedures

HCFR employees are required to conform to the standards of conduct provided in the HCFR policies and procedures manual.[15] Additionally, HCFR rules and regulations require its employees to "adhere to legal, professional, and trade rules and standards."[16]

Medic Martin, Medic Sweeney, Acting Lieutenant Barton, and Lieutenant Morris all testified that they were familiar with and received training on the below policies and procedures.

HCFR Standing Order and Protocol section 345.18-Patient Assessment, requires an HCFR responder to create a general impression of the patient,[17] and then continue to a primary assessment of the patient. The primary assessment is designed to identify any immediate threat to life and allow a responder to quickly determine any need for critical intervention.

A responder must assess five priorities under the primary assessment:
1) Circulation (check pulse), 2) Airway (check that patient's airway is open), 3) Breathing (ensure patient can breathe, and

[14] Crystle Galloway's Death Certificate (Jul. 24, 2018).
[15] Hillsborough County, County Administrator Policy Manual, Policy Number 7.6, Rule 1 (Oct. 1, 2015).
[16] Hillsborough County Fire Rescue, Policies and Procedures Manuals: Rules and Regulations—Statement of Ethics (Mar. 1, 2010).
[17] HCFR Standards for Medical Documentation section 360.01 defines a "patient" as "a person encountered by a member of HCFR who by complaint of injury or illness, observation of the responder, or mechanism of injury may be expected to require medical evaluation and/or attention."

is doing so normally), 4) Disability (assess patient's ability to respond to stimuli—both verbal and physical),[18] and 5) Expose (expose the body to identify threats or trauma).

At this point, the responder should make an initial determination whether the patient is a "Priority/ALS patient" who requires rapid transport to the hospital, or who needs or will benefit from paramedic level care en route.

Next, a responder is required to complete a secondary assessment, and repeat it throughout the duration of care as dictated by patient conditions. The secondary assessment requires:
1) Vital signs—including pulse rate, respiratory rate, blood pressure, EKG and blood oxygen monitoring as appropriate, Glasgow coma score, pupil response, and blood sugar level; 2) a head-to-toe exam, and 3) a focused patient history inquiring about the patient's signs and symptoms, allergies, medications, pertinent medical history, last oral intake, and events leading up to the injury or illness.

The responder must thoroughly document all information he or she gathered and interventions he or she performed during the course of care.

HCFR Standing Order and Protocol section 360.01- General Standards for Documentation, requires that "any response or encounter with a patient…shall have an ePCR (electronic patient care record) completed by all units…" The protocol then details different recording requirements for different patient situations.

First, this protocol requires the Rescue Officer to ensure proper documentation of all pertinent data as it relates to the patient encounter and all care rendered.

Second, this protocol requires a responder who encounters a patient who refuses medical transportation to ensure that the patient is competent; the responder must also completely document his or her patient encounter and exam. The responder's exam must include at least two sets of the patient's vital signs and a thorough evaluation. Additionally,

[18] An assessment of the patient's disability requires that the responder communicate with the patient, and that the patient respond. EO Case No. 45-E8, *Martin Interview*, 15 (Aug. 6, 2018); and EO Case No. 449E-18, *Sweeney Interview* at 18 (Aug. 6, 2018).

the responder must document all efforts made to convince the patient to seek higher level of medical care, and receive an informed refusal document signed by a competent patient.

Third, this protocol requires a responder who assists a citizen with a citizen assist or a lift assist call to complete an ePCR, which includes the patient's demographics, mental status, vital signs, the evaluation performed to determine that there was no illness or injury present, and a description of the service provided.

Transport to Stroke Center

The responders to the scene all recognize that if a patient is identified as a stroke patient, rapid transport to a stroke center would be the appropriate standard of care.[19]

Performance of Patient Assessment or Evaluation of Patient's Vital Signs

At no time did HCFR personnel ask Ms. Galloway or Ms. Black why transport to the hospital had been requested.[20] Additionally, HCFR personnel did not obtain any of Ms. Galloway's vital signs or otherwise perform a complete assessment to determine if transportation to the hospital or medical treatment was warranted.

Fire Medic Martin:

In pertinent part, Fire Medic Martin testified that:

- He did not perform a primary assessment.
- He did not determine whether Ms. Galloway was stable, but merely brought the stair chair upstairs.
- He did not "put hands on or touch the patient."[21]
- He did not interview or talk to Ms. Galloway.[22]
- He did not obtain a SAMPLE history.[23]
- He did not get a refusal of treatment and transport.[24]

Fire Medic Sweeney:

In pertinent part, Fire Medic Sweeney testified that:

[19] EO Case No. 45-E8, *Martin Interview* at 60 (Aug. 6, 2018); EO Case No. 449E-18, *Sweeney Interview* at 91-92 (Aug. 6, 2018). EO Case No. 447-E8, *Barton Interview* at 58 (Aug. 6, 2018). EO Case No. 448-E18, *Morris Interview* at 75 (Aug. 6, 2018).
[20] EO Case No. 45-E8, *Martin Interview* at 65-66 (Aug. 6, 2018).
[21] *Id*. at 28.
[22] *Id*. at 29 and 49.
[23] *Id*. at 30.
[24] *Id*. at 32.

- He did not ask Ms. Galloway what was wrong with her.[25]
- He did not take her pulse or otherwise obtain her vitals.[26]
- He did not interview the patient.[27]
- He did not obtain a SAMPLE history.[28]
- He did not obtain a refusal of treatment from Ms. Galloway.[29]

Acting Lieutenant Cortney Barton

In pertinent part, acting Lieutenant Barton testified that:

- She did not perform a primary assessment;[30]
- She did not obtain Ms. Galloway's vitals;[31]
- She did not interview Ms. Galloway.[32]

Lieutenant John Michael Morris

In pertinent part, Lieutenant Morris testified that:

- He did not take her pulse.[33]
- He did not obtain a SAMPLE history.[34]
- He did not obtain a refusal of treatment.[35]
- "Vitals were not taken that night."[36]

Expert Witness Testimony

Expert witness John Everlove concluded that, based on his review of relevant documents from Ms. Galloway's case, the HCFR responders' failure to perform a full assessment of or obtain baseline vitals from Ms. Galloway (among other breaches of duty) resulted in Ms. Galloway "not receiving appropriate and timely medical intervention, treatment and transportation for her life-threatening condition, contributing to her death."

[25] EO Case No. 449E-18-E8, Sweeney Interview at 87. Sweeney Deposition, p. 22-23.
[26] EO Case No. 449E-18-E8, Sweeney Interview at 48 and 52. Sweeney Deposition, pp. 13-14; 33.
[27] EO Case No. 449E-18-E8, Sweeney Interview at 50. Sweeney Deposition, p. 14-15.
[28] EO Case No. 449E-18-E8, Sweeney Interview at 51.
[29] EO Case No. 449E-18-E8, Sweeney Interview at 56. Sweeney Deposition, p. 19.
[30] EO Case No. 447-E8, Barton Interview at 46. Barton Deposition, p. 41-42.
[31] EO Case No. 447-E8, Barton Interview at 47. Barton Deposition, p. 41.
[32] *Id*. at 48.
[33] Arbitrator Deposition of Morris, at 396.
[34] EO Case No. 448-18, *Morris Interview* at 56.
[35] *Id*. at 61, 68.
[36] *Id*. at 67.

Additionally, expert witness Dr. Matthew Moore concluded "within a reasonable degree of medical probability, that the failure of the Hillsborough County Fire Rescue personnel to perform a physical evaluation, obtain vital signs, stabilize and transport Crystle Galloway to an appropriate facility caused or significantly contributed to her demise."

Estimated Economic Losses

Ms. Galloway is survived by three children: Jessica Ann Flowers, Jacob Aiden Flowers, and Teneisha Adrianna Brown, who were 12 days old, 7 years old, and 13 years old, respectively, at the time of her death. An expert witness testified that the present value of the economic loss to her children as a result of Ms. Galloway's death is $2,856,196.[37]

Litigation History and Settlement

Ms. Black, acting as representative of Ms. Galloway's estate, filed a civil cause of action in Hillsborough County seeking relief as a result of this incident.[38] Prior to trial, the parties arrived at a settlement agreement[39] and the case was subsequently closed.[40]

Settlement

Counsel for claimant's estate believed the potential jury verdict value of this matter would be between $6 million and $8 million. The respondent did not admit liability or responsibility for the incident, but did reach a mediated settlement agreement of $2.75 million. As part of the agreement, the respondent agreed to be silent on the claim bill, not support or oppose the bill, and did not present a case or argument at the special master hearing.[41]

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[37] Raffa Consulting Economists, A Present Value Analysis of the Loss of Dependent Support, and the Loss of the Household and Childcare Services Sustained as a Result of the Death of Ms. Crystle Marie Galloway, 10 (Apr. 17, 2020).
[38] *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).
[39] Settlement and Release Agreement (June 10, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).
[40] Notice of Voluntary Dismissal (Aug. 31, 2020), *Black, as Personal Representative of the Estate of Crystle Galloway v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div F (Fla. 13th Jud. Circ. 2019).
[41] Settlement and Release Agreement for *Black v. Hillsborough Co. Bd. of County Comm'rs.*, Case No: 19-CA-010708 Div. F (Fla. 13th Jud. Circ. 2019).

Funds Received by Claimants
Pursuant to settlement agreement, claimant will receive funds from the Hillsborough County Board of County Commissioners.

Respondent's Payment Pursuant to the Statutory Cap
The claimant will receive the full amount of the respondent's statutory limit ($300,000 per incident) from the Hillsborough County Board of County Commissioners and seeks the remaining balance of the settlement ($2.45 million) through this claim bill. According to attorney for the claimant, these funds will be divided equally among Ms. Galloway's three children and held in a trust for their education and care by a judicially-appointed trust administrator.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 23, 2021, was a *de novo* proceeding to determine whether Hillsborough County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the Special Master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the claimant will not receive the full amount of its judgment unless the Legislature approves this claim bill authorizing the additional payment.

In this matter, the claimant alleges negligence on behalf of Hillsborough County Fire Rescue employees Martin, Morris, Sweeney, and Barton. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.[42]

[42] *City of Boynton Beach v. Weiss,* 120 So.3d 606, 611 (Fla. 4th DCA 2013).

Negligence

There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risk; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation—where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.[43]

Duty

Statute, case law, and agency policy describe the duty of care owed by medical personnel. Generally, the standard of professional care is a level of care, skill, and treatment that, in consideration of all surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably prudent health care providers.[44]

Ms. Galloway, by complaint of her illness via her mother's call to 911, was a patient who had an expectation of medical evaluation or attention. HCFR personnel therefore had a duty according to law and their employer's policies and procedures to (1) obtain vitals—including pulse—from the patient, Ms. Galloway, and (2) perform a head-to-toe examination.

Breach

HCFR personnel Barton, Morris, Martin, and Sweeney breached the duty described above when they failed to take Ms. Galloway's vitals and failed to perform a secondary assessment of Ms. Galloway.

Causation and Damages

Ms. Galloway's death was the natural and direct consequence of the HCFR personnel's breach of their duties. As a result of the HCFR responders' failure to perform their duties, Ms. Galloway was not treated for her subarachnoid hemorrhage in a timely manner and ultimately died, resulting in the loss of her potential earning.

The paramedics were acting within the course and scope of their employment with Hillsborough County at the time they failed to asses Ms. Galloway. Hillsborough County, as the

[43] *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).
[44] *Saunders v. Dickens*, 151 So.3d 434, 441 (Fla. 2014); *see also* section 401.411, F.S.

employer, is liable for damages caused by its employee's negligent act.[45]

According to the economic analysis done by the Raffa Consulting Economists, Ms. Galloway's estate suffered damages of at least $2,856,196 due to her premature death. A representative of Ms. Galloway's estate and Hillsborough County have agreed to settle this matter for $2.75 million. This figure is reasonable based on the evidence.

ATTORNEY FEES: The attorney for Ms. Galloway's estate has agreed to limit his fees to 25 percent of any amount awarded by the Legislature (not to exceed $612,500), and the lobbyist for Ms. Galloway's estate has agreed to limit his fees to 5 percent of any amount awarded by the Legislature (not to exceed $122,500), in compliance with s. 768.28(8), F.S.

RECOMMENDED AMENDMENT: The undersigned recommends removing language from lines 41-45 of the bill, as no testimony was presented to that effect.

RECOMMENDATIONS: Based on the foregoing, the undersigned recommends that Senate Bill 26 be reported FAVORABLY.

Respectfully submitted,

/s/Jessie Harmsen
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary
The committee substitute removes an allegation that the paramedics refused to take Ms. Galloway to the hospital because it looked like she had too much to drink. The committee substitute also replaces the limit on attorney fees expressed as a percentage of the proceeds of the bill with separate dollar value limits on attorney fees, lobbying fees, and costs.

[45] *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981); *Stinson v. Prevatt*, 84 Fla. 416 (1922).