



**STORAGE NAME:** h6521a.CIV

**DATE:** 1/28/2022

January 27, 2022

SPECIAL MASTER'S FINAL REPORT

The Honorable Chris Sprows  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: CS/HB 6521 - Representative Maney  
Relief/Harry Augustin Shumow/Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital

**THIS IS AN UNCONTESTED EXCESS JUDGMENT CLAIM FOR \$5,000,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN ROSE SHUMOW, AS NATURAL PARENT AND LEGAL GUARDIAN OF H.A.S., AND THE PUBLIC HEALTH TRUST OF MIAMI-DADE AFTER H.A.S. SUFFERED INJURIES FROM THE NEGLIGENCE OF A PUBLIC HEALTH TRUST EMPLOYEE. THE PUBLIC HEALTH TRUST HAS PAID THE STATUTORY LIMITS OF \$300,000.**

FINDINGS OF FACT:

On August 22, 2017, six-year old H.A.S. was admitted to the Jackson Memorial Hospital Holtz Children's Hospital<sup>1</sup> Pediatric Intensive Care Unit (JMH) for suspected liver failure. He was diagnosed with influenza, hepatitis, acute kidney injury, and encephalopathy.<sup>2</sup> An MRI of H.A.S.'s

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<sup>1</sup> The Public Health Trust was created by the Miami-Dade County Board of County Commissioners as an independent governing body for Jackson Health System. Holtz Children's Hospital is part of the Jackson Health System. See About Jackson Health System, <https://jacksonhealth.org/about-us/> (last visited Aug. 10, 2021).

<sup>2</sup> Encephalopathy is a term for any diffuse disease of the brain that alters brain function or structure and may be caused by an infectious agent (bacteria or virus). See Encephalopathy Information Page,

brain revealed small areas of ischemia due to infarction (stroke).<sup>3</sup> Six days later, on August 28, 2017, in connection with renal failure, H.A.S. underwent a needle biopsy of his kidney. Over the following ten days, H.A.S. remained hospitalized and his condition began to slowly improve.

On September 7, 2017, H.A.S.'s condition began deteriorating; his abdomen was distended, he had a fever, and he was complaining of severe abdominal pain.

A physician ordered a STAT Complete Blood Count (STAT CBC)<sup>4</sup> for the early morning hours of September 8, 2017. H.A.S.'s blood was drawn at 3:26 a.m. H.A.S.'s specimen was not initially analyzed until 6:50 a.m. Laboratory technician Simeon Pierre (Pierre) performed the analysis of H.A.S.'s specimen, which reflected a critical hemoglobin value of 2.4-2.5, which was more than a 25% decrease from the last CBC performed, which resulted in a hemoglobin level of 8.0. As a result of the critically low value, Pierre rechecked the sample at 6:52 a.m., which again resulted in a critical value. Pierre rechecked the specimen again at 7:18 a.m. and 7:44 a.m., and received the same critical value result. Pierre cancelled the lab based on her belief that the specimen was possibly IV contaminated. Pierre then made a request for a new blood draw to a Pediatric Intensive Care Unit (PICU) nurse, but never informed the nurse or a physician attending to H.A.S. that the initial specimen was critically low or that there was at least a 25% decrease in hemoglobin value from the last CBC. Pierre failed to report the change in hemoglobin values to anyone.

At approximately 8:00 a.m. on September 8, 2017, the PICU medical team observed that H.A.S. was jaundiced and pale, feverish, tachycardic and had a high respiratory rate.

At 8:31 a.m. on September 8, 2017, Dr. Benjamin Abraham, a medical resident, who was working under the

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<https://www.ninds.nih.gov/Disorders/All-Disorders/Encephalopathy-Information-Page> (last visited Nov. 10, 2021).

<sup>3</sup> Report of Guardian ad Litem Attorney, Lewis N. Jack, Esq. at 2.

<sup>4</sup> A Complete Blood Count is a laboratory test for white blood count, red blood count, hemoglobin count, hematocrit count, and platelet count needed immediately in order to manage a medical emergency. See STAT and Critical Tests, chrome-extension://efaidnbmnnnibpcajpcglclefndmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.testmenu.com%2Fzsfglab%2FTestDirectory%2FSiteFile%3FfileName%3Dsidebar%255CSTAT%2520and%2520Critical%2520Tests.pdf&clen=185249 (last visited Aug. 10, 2021). A STAT CBC at JMH is understood to mean that the blood sample will be drawn and delivered to the lab within one hour. (Barry Gelman, M.D. unsworn statement, 41:1 – 41:5, Nov. 27, 2018.)

supervision of attending physician, Dr. Michael Narres, ordered a repeat STAT CBC for 8:45 a.m. That specimen was never drawn; the order had been discontinued without explanation.

At 2:09 p.m. on September 8, 2017, a STAT CBC was drawn and that specimen was analyzed at 2:58 p.m. At 3:04 p.m., the laboratory technologist contacted the nurse in the PICU and notified her of the critical value of the specimen. At 4:29 p.m., the CBC was repeated with another critical value result. At 4:37 p.m., O negative blood was ordered STAT for transfusion due to a suspected internal hemorrhage. At 5:35 p.m., H.A.S. sustained profound bradycardia<sup>5</sup> and a loss of consciousness.<sup>6</sup> A Code Blue was called and physicians began CPR. Over an hour elapsed before H.A.S.'s spontaneous circulation returned. The deprivation of oxygen resulted in significant brain injury to H.A.S., as well as an ischemic spinal cord injury of the thoracic and lumbar spinal cord.<sup>7</sup>

H.A.S.'s medical providers ultimately confirmed, via abdominal ultrasound, that he had been suffering from an acute internal hemorrhage emanating from his left kidney, which had been biopsied on August 22, 2017.

H.A.S. is now 11 years old and is unable to care for himself, walk, or talk; he is dependent on others for all activities of daily life and will continue to be dependent on others for the rest of his life. He suffers from incontinence of the bowel and bladder, epilepsy and he is a quadriplegic. His mother, Rose Shumow, left her employment following these events so that she could take care of H.A.S. His father subsequently died as a result of an accident, thus the family is currently living off of savings.<sup>8</sup>

Because Rose Shumow is the sole caretaker of her three minor children, she has hired someone to assist with day-to-day living so that she can continue providing H.A.S. full-

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<sup>5</sup> Bradycardia is a slower than normal heart rate. See Bradycardia, <https://www.mayoclinic.org/diseases-conditions/bradycardia/symptoms-causes/syc-20355474> (last visited Nov. 10, 2021).

<sup>6</sup> H.A.S.'s heart rate did not come up despite medication (epinephrine) and chest compressions until he received a significant amount of blood. This was the result of profound anemia.

<sup>7</sup> Spinal cord ischemia occurs as a result of reduced blood flow to the spinal cord. See Critical Care Medicine, Spinal cord ischemia, <https://www.cancertherapyadvisor.com/home/decision-support-in-medicine/critical-care-medicine/spinal-cord-ischemia/> (last visited Nov. 10, 2021).

<sup>8</sup> Moses Shumow, who had been the family's sole breadwinner following H.A.S.'s injury, was killed in an accident on October 22, 2019, leaving Rose Shomov as a single parent without any guaranteed stream of income as she serves as H.A.S.'s full-time caretaker. See Report of Guardian ad Litem Attorney, Lewis N. Jack, Esq.

time attendant care.<sup>9</sup> The woman she has hired drives the other children to and from school and extra-curricular activities; runs errands; and assists with meal preparation and laundry. This allows Rose Shumow to homeschool H.A.S. and provide various therapies in the home.

LITIGATION HISTORY:

On May 24, 2019, Moses and Rose Shumow, as guardians of H.A.S. (Claimant) filed a civil suit against the Public Health Trust of Miami-Dade County alleging medical negligence as a result of the failure to use reasonable care in Claimant's treatment.

On July 24, 2021, the Circuit Court entered an order appointing Lewis N. Jack, Jr., Esq. as Guardian ad Litem (GAL) to review a proposed minor settlement.

On July 29, 2021, counsel for Claimant filed a motion to approve minor settlement, advising that the parties had reached a settlement for \$5,300,000 with the Respondent paying \$300,000 under section 768.28, Florida Statutes. The motion also states that the excess amount of \$5,000,000 will be the subject of a claim bill and that the Respondent has agreed to not oppose passage of the claim bill. Attached to the motion is a copy of the GAL's report.

The GAL's report reflects that the GAL conferred with counsel representing the Claimant, Claimant's mother, a lobbyist retained by Claimant, and a Trusts and Estate attorney, who drafted a special needs trust for H.A.S. The GAL also reviewed portions of the litigation file, which included medical records and bills, as well as the proposed settlement agreement, interim/draft closing statement and proposed claim bill. He opined that "it is in H.A.S.'s best interest to enter into this settlement agreement as it provides the best opportunity for H.A.S. to receive money necessary for his care and treatment at the soonest time possible."

On August 8, 2021, the circuit court entered its Order Granting Plaintiffs' Motion to Approve Minor Settlement and Dismissing Case, with the court reserving jurisdiction to review the final closing statement if this claim bill is passed. On November 2, 2021, the circuit court entered an order dismissing the case with prejudice as a result of the parties' settlement. The court retained jurisdiction to enforce the

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<sup>9</sup> The alternative would have been to hire attendant care, however, it would be unlikely that H.A.S. would have the same medical professional with him every day. The pandemic caused additional concerns about various staff coming into the home with H.A.S.' condition.

settlement and to enter orders as necessary to enforce any resulting claim bill.

CLAIMANT'S POSITION:

Claimant argues he is entitled to the remaining amount of \$5,000,000 under the settlement agreement.

RESPONDENT'S POSITION:

Respondent does not oppose the claim bill and agreed not to oppose it as part of the settlement agreement.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, each claim is reviewed *de novo* in light of the elements of negligence.

In Florida, to prevail on a medical negligence claim, a plaintiff must show what standard of care was owed by the defendant, how the defendant breached that standard of care, and that the breach was the proximate cause of damages.<sup>10</sup> The professional standard of care is the level of care, skill, and treatment which, in light of all surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.<sup>11</sup> Generally, expert testimony is required to establish the standard of care prevalent in a particular medical field. The services rendered by a physician are scrutinized by other physicians in the same field to determine whether there was a failure to adhere to the standard of care.<sup>12</sup>

Duty

JMH's Delta check policy requires lab technicians to report a change in HGB results that are greater or less than 25% from previous results and to inform the Person in Charge (lab supervisor).

JMH's policy on notification of critical values requires lab technicians to "make every effort to effectively and accurately communicate with patient care units. They will report critical values to patient caregivers in a timely manner." Lab technicians are required to report this information within thirty minutes to a licensed independent practitioner, which includes the attending physician or designee, which may include a physician fellow, medical resident, medical student, RN, or LPN.

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<sup>10</sup> *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So.2d 1018 (Fla. 1984).

<sup>11</sup> S. 766.102(1), F.S.

<sup>12</sup> *Moisan v. Frank K. Kriz, J.K., M.D., P.A.*, 531 So.2d 398, 399 (Fla. 2d DCA 1988).

Pierre provided an unsworn statement during which she admitted knowledge of JMH's delta policy.<sup>13</sup>

From this evidence, I find that Pierre, as an employee of JMH, had a duty to report the lab results to her supervisor - the Person in Charge - and had a duty to clearly communicate the CBC results to the attending physician or designee.

#### Breach

Pierre provided an unsworn statement during which she admitted that she did not follow JMH's delta policy because she believed the sample had been contaminated.<sup>14</sup>

Pierre breached her duty to H.A.S. when she failed to communicate H.A.S.'s CBC results to the Person in Charge and/or attending physician or designee. As an employee of JMH on duty when she made the decision not to inform anyone of the results, her breach is attributable to JMH under the doctrine of respondeat superior.

JMH's own internal review of the events that led to H.A.S.'s injuries determined that Pierre "did not follow existing policy regarding escalation of delta changes +/- 25% from previous results to a supervisor."

#### Causation

For a defendant to be liable to a plaintiff, the plaintiff must show that the defendant's actions were the proximate cause of the plaintiff's injuries. Based on the sequence of events at JMH and the expert testimony provided at the final hearing, I find that H.A.S.'s injuries are the direct and proximate result of Respondent's negligence.

Pierre, the lab tech working in JMH's lab, owed a duty to H.A.S. to communicate her findings to his patient care unit and the Person in Charge. Pierre breached her duty to H.A.S. when she made the unilateral decision not to share her findings with anyone in H.A.S.'s patient care unit or even a supervisor within the lab.

Stephen Deputy, MD, an expert retained by the Claimant opined that H.A.S. suffered a brain injury and an ischemic spinal cord injury as a result of the delayed recognition of treatment of his critical values.

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<sup>13</sup> Pierre unsworn statement, 72:24 - 75:1, Nov. 14, 2018.

<sup>14</sup> *Id.*

Additionally, Aaron Zucker, MD,<sup>15</sup> another expert retained by Claimant, executed a declaration under penalty of perjury after having reviewed the medical records of H.A.S. along with JMH policies and procedures, opining that as a result of Pierre's violation of JMH's policies and procedures, H.A.S.'s anemia went undiagnosed for at least eight hours; had Pierre followed JMH's policies and procedures by reporting the panic hemoglobin levels during the morning of September 8, 2017, H.A.S. would not have suffered hemorrhagic shock that resulted in cardiac arrest and the subsequent injuries.

From that expert testimony, I find that had Pierre communicated her findings to someone, either the Person in Charge in the lab or the attending physician or designee in the patient care unit, H.A.S.'s medical team would have discovered that he was bleeding internally much sooner and likely would have avoided the loss of consciousness and resulting injuries. When Pierre breached this duty, she was working as a lab technician in JMH's lab as a JMH employee on duty. Thus, Respondent is liable for Pierre's actions under the doctrine of respondeat superior.

#### Damages

H.A.S.'s damages are severe and lifelong. He has significant neurological disabilities that have left him a quadriplegic, unable to communicate verbally, epileptic, and subject to painful involuntary muscle spasms. He is dependent on others to use the restroom, bathe and eat. He will not be able to secure employment during his lifetime as a result of his disabilities, but is expect to have a normal life expectancy. Richard Paul Bonfiglio, M.D., an expert retained by Claimant, opined that H.A.S. will remain dependent the rest of his life.

Outstanding medical liens (which have been reduced) to be satisfied with the funds received from this claim bill include: \$250,000 to Avmed; \$1,079.37 to Mass Health; and \$10,000 to CMS Plan for Medicaid.

While a significant amount of the medical expenses associated with H.A.S.'s conditions and treatment are covered by Medicaid, a number of other expenses are not. Rose Shumow pays out-of-pocket for several therapies,

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<sup>15</sup> Prior to his retirement on July 1, 2020, Dr. Zucker was a licensed medical physician in the State of Connecticut, working as a Pediatric Critical Care physician. He qualifies as a "medical expert" under Florida statute and his expert opinions have not been disqualified in court. He obtained an Expert Witness Certificate from the Florida Department of Health pursuant to s. 458.3175, F.S.

including functional neurology, craniosacral therapy, neuromovement therapy, Ayurvedic consulting, H.A.S.'s medical marijuana license, CBD and THC products and the assistance provided by the nanny she hired to assist with her other children.<sup>16</sup> Additionally, she testified at the final hearing that H.A.S. would benefit from the purchase of an exercise mat, adaptive tricycle, rocking chair, car seat, Trexo robotic gait trainer, ceiling-mounted lift system, and handicapped accessible van.

A life care plan was developed by Susan K. McKenzie, certified life planner, opining that the costs for H.A.S.'s lifetime care could exceed \$20,000,000.

Paul Ramos, a certified life care planner, with over 30 years of experience in healthcare and a background in physical therapy, prepared a future needs analysis for H.A.S. opining that \$6,200,963.99 in expenses related to H.A.S.'s care over his lifetime would not be covered by Medicaid.

Dr. Richard Bonfiglio opined at the final hearing that the expenses provided for in the life care plans presented are necessary.

Even if these life care plans overestimate the cost of his future care, H.A.S. will be dependent and require care for the rest of his life. The settlement amount of \$5,000,000 is a reasonable amount to compensate H.A.S. for his injuries. The proceeds will be used to cover current expenses not covered by Medicaid and for expenses incurred by H.A.S. once he reaches the age of majority.

A Special Needs Trust has been established for H.A.S.'s future care and has been funded with the \$300,000 paid by the Respondent as part of the settlement. The trust will pay providers directly for expenses incurred; Rose Shumow and H.A.S. will have no control over the use of the trust assets.

ATTORNEY'S/  
LOBBYING FEES:

If the claim bill passes, the attorney fee will not exceed \$1,000,000 and the lobbyist fee will not exceed \$250,000. Outstanding costs are \$133,344.06.

RESPONDENT'S ABILITY  
TO PAY:

Respondent is self-insured and payment of this claim bill will not affect the operations of the County.

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<sup>16</sup> Medicaid would likely cover the cost of attendant care for H.A.S., however because Rose Shumow has chosen to provide that care and have a nanny assist with her other two children, she receives no compensation or reimbursement.



LEGISLATIVE HISTORY:

This is the first time this claim bill has been presented to the Legislature.

RECOMMENDATIONS:

I respectfully recommend that Committee Substitute for House Bill 6521 be reported FAVORABLY.

Respectfully submitted,

*Carine Mitz*

**CARINE MITZ**

House Special Master

cc: Representative Maney, House Sponsor  
Senator Rodriguez, Senate Sponsor  
Peter Delia, Senate Special Master