



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 18 (2005)** – Senator Mike Fasano
Relief of Sharon and Megan Jurgrau

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EQUITABLE CLAIM FOR \$500,000 BASED UPON A CONSENT FINAL JUDGMENT IN WHICH SOUTH BROWARD HOSPITAL DISTRICT AGREED TO COMPENSATE SHARON AND MEGAN JURGRAU \$700,000 FOR THE DEATH OF THEIR HUSBAND AND FATHER MARK JURGRAU AS A RESULT OF THE NEGLIGENCE OF THE SOUTH BROWARD HOSPITAL DISTRICT. THE HOSPITAL DISTRICT HAS PAID THE STATUTORY LIMIT OF \$200,000.

FINDINGS OF FACT:

In the summer of 1999, Mark Jurgrau, a 38-year-old architect, underwent medical tests after exhibiting weakness and shortness of breath while engaging in a basketball game. The tests revealed that Mark Jurgrau had a problem with the aortic valve of the heart. He was advised to have the valve replaced with his own pulmonic valve in a procedure known as the "Ross procedure." The Ross procedure is commonly used for young people because it has a very long useful life and does not require medications subsequent to surgery.

The procedure was performed by Dr. Michael Rosenbloom on September 2, 1999, at Memorial Hospital, part of the South Broward Hospital District (SBHD). Mr. Jurgrau

tolerated the procedure well and appeared to be doing fine even though he was placed back on cardiopulmonary bypass for 30 additional minutes to achieve further hemostasis (the stoppage of bleeding). After being taken off cardiopulmonary bypass, coagulation parameters were measured. Based upon the measurement, additional platelets were transfused. Mr. Jurgrau was taken to the Heart Surgery Unit and his care was transferred to Dr. Thomas Jacob, M.D., and Nurse Kathryn Kater, ARNP (advanced registered nurse practitioner). By 9:30 p.m. that evening, Mr. Jurgrau was assisted into a chair.

Both Drs. Rosenbloom and Jacob were independent doctors and were not agents of the SBHD. Ms. Kathy Kater and the other hospital nurses on Mr. Jurgrau's health care team were agents of the SBHD.

The next day, September 3, 1999, Mr. Jurgrau's cardiac monitor showed the normal regular rhythm of the heart (sinus rhythm) with "frequent premature ventricular contractions with ST segments slightly depressed." That same morning, Mr. Jurgrau's pulmonary artery catheter and pulmonary artery line was discontinued. He was also transferred to the Intensive Care Unit.

On September 4, 1999, Nurse Kater removed the pacing wires as well as the foley catheter and chest tube. On September 5, 1999, in the early morning hours, Mr. Jurgrau had a cardiac monitor showing the heart's two upper chambers (atria) quivering rather than beating effectively (atrial fibrillation) at the rate of 130 beats per minute. Later that morning Mr. Jurgrau went back into atrial fibrillation from sinus rhythm with a heart rate of approximately 140 beats per minute. Nurse Kater ordered Mr. Jurgrau to be placed on intravenous cardizem protocol to regulate the heart rate. Mr. Jurgrau's hematocrit was reported at 21.4 with a platelet count of 93,000. He had a blood products transfusion.

Around 1:00 p.m., that day, Mr. Jurgrau complained of urinary retention and was sweating. This information was provided to Nurse Kater. At 6:15 p.m., Mr. Jurgrau was again in atrial fibrillation with a heart rate in the 130's. Between 7:00 and 8:30 p.m., Mr. Jurgrau became nervous, his heart rhythm was atrial fibrillation at the rate in the 130's. Mr. Jurgrau complained of difficulty breathing and the

oxygen saturation was measured at 87 percent after 3 liters of oxygen. Also that evening, Mr. Jurgrau received a chest x-ray and the cardizem drip was in progress. Nurse Kater ordered Mr. Jurgrau be given Xanax for his anxiety.

On September 6, 1999, at 1:45 a.m., Mr. Jurgrau received a blood product transfusion. At 8:45 a.m., that morning, Mr. Jurgrau complained of pain in the incisional area and was very anxious. He also complained of not being able to breath and was sweating. A nurse from the hospital spoke with Nurse Kater by telephone explaining Mr. Jurgrau's condition. Mr. Jurgrau's pulse oxygenation was 98 percent on 5 liters of oxygen, his blood pressure was 112/70, his heart rate was 112, and he was sweating. Nurse Kater again ordered Xanax be given, however, Mr. Jurgrau's anxiety was not relieved according to documentation by a hospital nurse.

Later that evening Mr. Jurgrau was assisted back to bed by the hospital nurses. His eyes began to roll back into his orbits and no pulse was found on the neck or wrist. The Code Blue alert button was pushed and cardiopulmonary resuscitation was begun. At 8:35 p.m., Mr. Jurgrau was given IPPB respiratory treatment, but this was discontinued early because of pain.

When the arrest began, the hospital nurses found Mr. Jurgrau in ventricular fibrillation and without cardiac output or pulse and was unresponsive. CPR was begun. At approximately 9:45 p.m., Mr. Jurgrau's hemoglobin was 6 and hematocrit 19. An echocardiogram was also performed at bedside. At 9:50 p.m., Drs. Rosenbloom and Jacob were called as was Nurse Kater. They arrived about one-half hour later. The Hospital's house physician was in attendance with Mr. Jurgrau until Dr. Rosenbloom arrived. Around 10:18 p.m., Mr. Jurgrau was given a second unit of blood.

At 10:38 p.m. Mr. Jurgrau was taken to the Heart Surgical Unit for his chest to be opened. His hemoglobin was 5 and hematocrit was 16. When the chest was opened by Drs. Rosenbloom and Jacob, a large amount of blood was suctioned. A total of six units of blood products were transfused. At 11:15 p.m., CPR was stopped and Mr. Jurgrau was pronounced dead by Dr. Rosenbloom.

On September 8, 1999, an autopsy was performed by Dr. Abdullah Fatteh at the request of Mrs. Sharon Jurgrau.

EXPERT TESTIMONY:

Dr. Abdullah Fatteh, M.D., performed an autopsy on Mark Jurgrau on September 8, 1999. The autopsy report was inconclusive as to cause of death, however, Dr. Fatteh later testified that after reviewing all patient records, that he believed Mr. Jurgrau died of internal bleeding.

Dr. Judith Brill, M.D., testified that Mr. Jurgrau's care was not adequate or aggressive enough based upon his situation. She stated that Mr. Jurgrau was given drugs that interfered with the platelets and was not given sufficient transfusions to increase his red blood cell count. Dr. Brill further testified that Mr. Jurgrau's symptoms and tests that were ordered were sufficient indicators of his problem, that if addressed, would have saved his life.

Addressing Nurse Kater's duty of care, Dr. Brill stated [Nurse Kater] "had the responsibility as a result of being in this role of providing the same level of care that a physician would have provided." Dr. Brill added that "she had a duty as a nurse practitioner to communicate concerns, problems, things that aren't really fitting together, deviation from the fast track, linear progressions to Dr. Jacobs and make sure that there's going to be action taken."

Dr. Ahvie Herskowitz, M.D., opined that all the people taking care of Mr. Jurgrau in a postoperative setting fell below the standard of care for not identifying and treating [Mr. Jurgrau] for the continuous bleeding problem that led to his death. Mr. Herskowitz echoed Dr. Brill's evaluation of the necessary standard of care.

Dr. W. Dudley Johnson, M.D., stated that the longer a patient is on cardiopulmonary bypass, the more care and oversight a patient needs because "there's still some damage to the coagulation parameters to make it a little difficult to control bleeding afterward." Dr. Johnson stated he did not put patients recovering from the Ross Procedure in the fast track situation very often. Dr. Johnson also agreed with Drs. Brill and Herskowitz criticism that Nurse Kater failed to evaluate the patient's critical information.

Based upon the testimony of each expert, the decision to replace Mr. Jurgrau's aortic valve was a good decision, the choice of the Ross procedure was a sound choice, and the operation was performed ably and correctly. One of the risks of valve replacement surgery is that the operative site might bleed internally. Symptoms of internal bleeding are easily recognizable and readily treatable.

CONCLUSIONS OF LAW:

The claimants have established to this Special Master's satisfaction, by a preponderance of evidence, that the respondent's employees owed Mr. Jurgrau a duty of care, that their applicable duty to Mr. Jurgrau was breached, and that the claimants' injuries and damages were a proximate and foreseeable result of that breach.

As in many cases of this nature, the various named defendants shared responsibility for the result, and although reasonable people might disagree with the allocation of the responsibility among the defendants, I find that the sum to be paid by the respondent, South Broward Hospital District, is supported by the evidence against it, in light of all circumstances.

THE SETTLEMENT:

On February 4, 2003, Judge Victor Tobin, of the Circuit Court of the 17th Judicial Circuit, Broward County, ordered a consent final judgment. Under the terms of the judgment, the defendant, South Broward Hospital District would pay to Sharon Jurgrau \$200,000. In addition, the Hospital District must cooperate with and support in every way the legislative approval of the consent Final Judgment and the passage of a claim bill for an additional \$500,000.

Sharon and Megan Jurgrau received \$200,000 from the insurance company of the late Dr. Thomas Jacob. Claims against Dr. Michael Rosenbloom and Dr. Richard Perryman were dropped.

GUARDIANSHIP:

A Guardian Ad Litem, Mr. Russell Adler, was appointed by the Circuit Court on November 14, 2002, for Megan Jurgrau, daughter of Mark Jurgrau. After reviewing relevant information and meeting with the minor, Megan Jurgrau, the Guardian Ad Litem recommended that Megan Jurgrau receive 25 percent of any distributions.

On April 14, 2003, Sharon Jurgrau was appointed Plenary Guardian of the Property of Megan Jurgrau by the Circuit Court, with full power to exercise all delegable legal rights and powers of the minor, to administer the property of the minor according to law, and to take possession of and to hold for the benefit of the minor, all the property and rents, income, issues and profits from it.

On June 2, 2003, pursuant to court order, an account was established at a financial institution doing business in this state in the name of the minor and her guardian. Proceeds of the first disbursement (25 percent of the available amount) have been deposited into this account.

At the hearing, Sharon Jurgrau testified that she preferred 15 percent of the proceeds be deposited into this account. She stated that this account would be turned over to Megan when she reached majority. Ms. Jurgrau stated that all of Megan's expenses, including food, clothing, and shelter, would be paid by Sharon Jurgrau until Megan reached majority. Sharon Jurgrau also stated that she anticipated paying for Megan's college from her proceeds.

ATTORNEYS FEES:

The claimant's attorney has submitted an affidavit certifying that attorney's fees are limited in accordance with §768.28(8), F.S., to 25 percent. Claimant's attorney further attests that expenses as of September 8, 2004, were \$1,086.13, but anticipate additional costs to be incurred by the firm to bring the matter to final resolution. These costs include the costs associated with the claim bill process and the probate proceeding with respect to the guardianship for the minor. The proposed closing statement estimates these costs at \$2,000. Lobbying expenses of 5 percent are in addition to attorney's fees.

RECOMMENDATIONS:

Accordingly, this Special Master recommends that SB 18 be amended to authorize and direct the South Broward Hospital District to appropriate from funds of the district not otherwise appropriated to compensate the claimants Sharon Jurgrau, the wife of Mark Jurgrau, and Megan Jurgrau, the daughter of Mark Jurgrau, for injuries and damages sustained as a result of the negligence of employees of the district the sum of \$500,000 as agreed to by the claimants and the district, in the following distribution to the claimants, after payment of attorneys fees and costs:

- 75 percent to Sharon Jurgrau and
- 25 percent to Megan Jurgrau.

Consistent with the Guardian Ad Litem report, I recommend that proceeds to Megan Jurgrau be deposited into the guardianship account solely for the benefit of Megan Jurgrau.

For the foregoing reasons, I recommend that Senate Bill 18 be reported FAVORABLY, as amended.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Senator Mike Fasano
Faye Blanton, Secretary of the Senate
House Claims Committee