Special Master's Final Report

The Honorable Daniel Perez
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6525 - Representative Antone
Relief/Eric Miles, Jr., and Jennifer Miles/South Broward Hospital District

SUMMARY

This is a settled claim for $200,000 by Eric Miles, Jr. and Jennifer Miles, as co-personal representatives of the estate of E.E.M. ("Claimants") against the South Broward Hospital District for injuries and damages E.E.M. suffered when healthcare providers employed by or under contract with the Hospital District failed to diagnose and treat E.E.M.'s bowel obstruction, leading to his injury and eventual death. The Claimants settled the claim for $500,000, and the County has since paid them the $300,000 maximum authorized under Florida's sovereign immunity law.

Though the Hospital District is not admitting liability in this matter, the Hospital District supports the passage of this Claim Bill as a reasonable resolution of the dispute. For the reasons set out below, the undersigned recommends that CS/HB 6525 be reported FAVORABLY.

FINDINGS OF FACT

The Incident

On December 24, 2017, Eric Miles, Jr., and Jennifer Miles ("the Claimants"), parents of 17-month-old E.E.M, took E.E.M. to the emergency department of Joe DiMaggio Children's Hospital ("JDCH"), a hospital operated by the South Broward Hospital District ("Hospital District"), a political subdivision of the State of Florida. According to the record, E.E.M. presented to JDCH with complaints of intermittent coughing, irritability, and decreased oral intake; however, JDCH discharged E.E.M. the very same day, after one x-ray.

On December 26, 2017, the Claimants took E.E.M. back to JDCH's emergency department after E.E.M. exhibited continued poor oral intake, decreased activity, lethargy, increased fatigue, fever, and diarrhea; his parents also noted that E.E.M. had blood and mucus in his stool and a perianal lesion. According to the medical records, healthcare providers at JDCH noted that E.E.M. was lethargic and severely dehydrated, and that, among other things, he had

significantly abnormal lab results. The record also notes that E.E.M. had a distended abdomen;[1] accordingly, on that date, E.E.M.'s healthcare providers admitted him to JDCH's pediatric intensive care unit, started him on antibiotics, and ordered an ultrasound of his abdomen.

On December 27, 2017, E.E.M.'s healthcare providers noted that his abdomen remained distended and was now tympanic;[2] he was also tachycardic[3] and had blood in his stool with significantly abnormal lab results. Accordingly, on that date, E.E.M.'s healthcare providers ordered an x-ray of E.E.M.'s abdomen, which revealed nonspecific gaseous bowel distension.[4]

Over the next few days, E.E.M.'s abdomen remained distended, his laboratory values remained significantly abnormal, and his perianal lesion worsened; he also continued to evidence poor oral intake and was placed on a feeding tube. On December 30, 2017, another x-ray of E.E.M.'s abdomen revealed gaseous distension of E.E.M.'s stomach and air in his abdomen.

On December 31, 2017, an x-ray of E.E.M.'s chest revealed gaseous gastric distension. Later that day, a full-body x-ray revealed, among other things, that E.E.M. had hypo-ventilatory changes with worsened aeration[5] and apparent increased interstitial and alveolar opacities;[6] significantly, this x-ray also revealed the persistence of his gaseous stomach distension. Still later on that day, an abdominal ultrasound revealed fluid accumulating in E.E.M.'s abdomen and pelvis, and his laboratory values remained significantly abnormal. Notes in E.E.M.'s chart from this date indicate that a CT Scan may be warranted for further evaluation of these conditions; however, no CT Scan occurred on this date.

On January 1, 2018, E.E.M.'s healthcare providers noted that he had continued abdominal distension and had not passed stool for eight days; they also noted rectal inflammation, worsening laboratory values, and decreased bowel sounds, with fluid buildup in the abdomen suspected. On that date, E.E.M's healthcare providers referred him for a surgical consultation with respect to his perianal lesion, as none of his healthcare providers seemed to understand what it was, or its cause; however, the pediatric surgeons who provided the consult noted a concern for some kind of auto-immune disease and declined to perform any exploratory surgeries or procedures to determine the cause of his persistent abdominal issues. On January 2, 2018, E.E.M.'s healthcare providers again noted his continued abdominal distension, lack of bowel movements, and significantly abnormal laboratory values, and they also noted vomiting.

On January 3, 2018, an x-ray of E.E.M.'s small bowel, conducted with contrast, showed delayed progression of the contrast through the dilated small bowel[7] loops and retrograde movement of the contrast from the small bowel into the stomach and, ultimately, the esophagus; the x-ray report notes that such findings indicate a possible small bowel obstruction. A report issued about an hour later, after a subsequent x-ray of E.E.M.'s chest and abdomen, also notes a high probability of a small bowel obstruction. That evening, E.E.M.'s healthcare providers finally

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[1] A "distended abdomen" is an abdomen that is abnormally swollen outward. This can be due to bloating from gas, or it can be due to accumulated fluid, tissue, or digestive contents. Cleveland Clinic, *Abdominal Distension*, https://my.clevelandclinic.org/health/symptoms/21819-abdominal-distension-distended-abdomen (last visited Mar.13, 2025).

[2] A "tympanic abdomen" is an abdomen that creates a drum-like sound when tapped; this typically results from the presence of fluid or air in the abdomen. Toronto Metropolitan University, *Abdomen – Percussion*, https://pressbooks.library.torontomu.ca/assessmentnursing/chapter/abdomen-percussion/ (last visited Mar. 13, 2025)

[3] "Tachycardic" refers to an abnormal heart rhythm with a fast heart rate of more than 100 beats per minute at rest. Cleveland Clinic, *Tachycardia*, https://my.clevelandclinic.org/health/diseases/22108-tachycardia (last visited Mar. 13, 2025).

[4] "Nonspecific gaseous bowel distension" means that air is present in the bowel due to an unknown cause. Cleveland Clinic, *supra* note 1.

[5] "Hypo-ventilatory changes with worsened aeration" means breathing to slowly or too shallowly, leading to carbon dioxide buildup in the blood. Cleveland Clinic, *Respiratory Depression (Hypoventialion)*, https://my.clevelandclinic.org/health/diseases/respiratory-depression (last visited Mar. 13, 2025).

[6] "Increased interstitial and alveolar opacities" means areas of increased density or whiteness, indicating inflammation, scarring, or fluid buildup in the lungs. Cleveland Clinic, *Interstitial Lung Disease*, https://my.clevelandclinic.org/health/diseases/17809-interstitial-lung-disease (last visited Mar. 13, 2025).

[7] The small bowel, which connects the stomach to the large intestine, extracts nutrients from and breaks down food on its way through the gastrointestinal tract. Cleveland Clinic, *Small Intestine*, https://my.clevelandclinic.org/health/body/22135-small-intestine (last visited Mar. 13, 2025).

conducted a CT Scan on his abdomen and pelvis; the associated report notes, among other findings, a small bowel obstruction, fluid buildup in E.E.M.'s abdomen, and a likelihood of peritonitis.[8] His chart also notes continued vomiting.

On January 4, 2018, yet another x-ray of E.E.M.'s abdomen conducted with contrast showed continued bowel distension and a lack of contrast advancement. Further, E.E.M.'s laboratory values continued to remain abnormal, and his abdomen remained distended.

On the afternoon of January 5, 2018, JDCH discharged E.E.M. to nearby Holtz Children's Hospital ("Holtz") for an immunology consult, as his healthcare providers at JDCH suspected that he had an unidentified auto-immune condition; this they did despite the repeated requests of E.E.M.'s parents to conduct an exploratory laparotomy on their son to identify the cause of his abdominal distress. Holtz admitted E.E.M. to its pediatric intensive care unit in critical condition, with findings noted on intake suggesting that E.E.M. had life-threatening conditions including sepsis[9] and related multiorgan failure; he was also on a ventilator.

While E.E.M.'s healthcare providers worked to stabilize him, his treating physician determined that he needed a surgical consultation. Holtz pediatric general surgeon Dr. Chad Thorson, who provided the consultation, testified that, nearly four years after he first examined E.E.M. on the morning of January 6, 2018, he still remembers the exam; according to Dr. Thorson, E.E.M. had an extremely distended, firm, and tympanic abdomen with a concerning anorectal region, and he appeared to be in excruciating pain after any slight movement. Based on these findings, Dr. Thorson suspected that E.E.M. had a bowel obstruction or perforation, and ordered a CT Scan of E.E.M.'s abdomen; when the CT scan showed a large amount of fluid in E.E.M.'s abdomen, suggesting a bowel perforation, Dr. Thorson decided to conduct an emergency exploratory laparotomy on E.E.M. that very day to confirm his suspicions.

The exploratory laparotomy revealed that E.E.M. did indeed have not one but two bowel perforations, inflammation, and numerous bowel adhesions; to address this, Dr. Thorson removed a small segment of E.E.M.'s bowel and performed an ileostomy to divert E.E.M.'s stool into a bag placed on his skin. Dr. Thorson also discovered that a large amount of succus had leaked out of E.E.M.'s small bowel and into his abdomen and pelvis, where it then proceeded to bathe E.E.M.'s bowels and dissolve the lining of his rectum, causing E.E.M.'s perianal lesion and sepsis.

On January 11, 2018, E.E.M. developed abdominal compartment syndrome, and his records note a foul-smelling liquid draining from around his ostomy bag with elevated infectious markers. Consequently, on that date, E.E.M. underwent a second exploratory laparotomy, during which he conducted an abdominal washout, intraabdominal abscess drainage, an ostomy takedown, a temporary abdominal wall closure, and the debridement and drainage of necrotic perianal and anal tissue.

On January 13, 16, and 19, 2018, E.E.M. underwent several additional surgeries, including for abdominal washouts, intraabdominal abscess drainage, and temporary or partial abdominal wall closures. In total, E.E.M. spent months at Holtz, supported by the Claimants, who testified that they never left him without one of his parents during his entire hospital stay. Over the subsequent years, E.E.M. also underwent many additional hospitalizations and surgeries, including for the removal of his entire remaining intestine, and relied upon total parenteral nutrition due to his inability to eat.[10] Tragically, on September 1, 2023, while awaiting a bowel

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[8] "Peritonitis" is an inflammation of the tissue lining the inside of the abdominal cavity. Cleveland Clinic, *Peritonitis*, https://my.clevelandclinic.org/health/diseases/17831-peritonitis (last visited Mar.13, 2025).

[9] "Sepsis" is the body's extreme response to an infection; it causes extensive inflammation throughout the body that can lead to tissue damage, organ failure, and death. Cleveland Clinic, Sepsis, https://my.clevelandclinic.org/health/diseases/12361-sepsis (last visited Mar.13, 2025).

[10] The record also shows that, during this time, E.E.M. met with a genetic specialist at Boston Children's Hospital, as his healthcare providers, searching for an explanation for his original bowel obstruction, wondered whether he had Chron's Disease. However, genetic testing revealed that, though E.E.M. did not have Chron's Disease, he did have an extraordinarily rare condition called Schwachman-Diamond Syndrome, which is primarily an immune disorder that, among other things, causes bone marrow suppression; in other words, E.E.M.'s bone marrow did not supply the cells

transplant, E.E.M. died at age seven following a bone marrow transplant that led to complete organ failure.

JDCH's Healthcare Providers

According to the record, over the course of E.E.M.'s admission to JDCH, pediatric specialists including Dr. Aymin Delgado-Borrego and Dr. Neeraj Kumar Raghunath, along with pediatric surgeons including Dr. David Drucker, Dr. Julie Ann Long, Dr. Gary Birken, and Dr. Tamar Leah Levene, assessed and/or treated E.E.M.[11] The record also reveals that, at all times pertinent to the instant matter, these healthcare providers were employed by or under contract with the Hospital District to provide healthcare services in their respective fields at JDCH.

The Standard of Care

Dr. Thane Blinman, a medical expert retained by the Claimants in the underlying lawsuit filed in this matter, opined that, based on a reasonable degree of medical probability, E.E.M. was already septic when he presented to JDCH on December 26, 2017; in support of this opinion, he points to the medical record, which indicates that, on that date, E.E.M. had an elevated white blood cell count, low platelet counts, acidosis, and other physical signs of impeded oxygen delivery, including tachycardia and altered mental state. Dr. Blinman also noted that, on this date, E.E.M. already had mucous and blood in his stool, and a perianal lesion; these, he testified, indicate that E.E.M. had already suffered some degree of intestinal injury when he arrived at JDCH. Further, Dr. Blinman noted that an x-ray taken of E.E.M.'s abdomen on December 31, 2018, evidences a bowel obstruction; in support of this position, Dr. Blinman noted that the films show massive stomach distension, with very little air progressing downward, and evidence of fluid in the abdomen.

Though he could not say with certainty when E.E.M.'s bowel ultimately perforated, Dr. Blinman opined that, based on the amount of fluid apparent in the CT Scan dated January 3, 2018, the perforations likely occurred at least a day, and more likely several days, beforehand. This comports with Dr. Thorson's testimony that, based on his discoveries during E.E.M.'s initial surgery on January 6, 2018, he concluded that E.E.M.'s bowel perforations occurred days, or even weeks, beforehand, as the human body could not form the types of adhesions or produce the inflammation found in E.E.M. within a short time period. Dr. Thorson also noted that succus only dissolves the internal structures, as seen in E.E.M.'s case, when outside of the bowel for a prolonged time period.

Dr. Blinman testified that the standard of care required a timely diagnosis of E.E.M.'s bowel injury, which, according to the record, should have been apparent to E.E.M.'s healthcare providers at JDCH, if not immediately upon E.E.M.'s arrival, at least long before his transfer to Holtz. Instead, Dr. Blinman noted that these healthcare providers went on what he called a "zebra hunt," looking for a strange auto-immune diagnosis when E.E.M. was "just a kid with a sick belly."[12] Indeed, these healthcare providers missed E.E.M.'s diagnosis entirely, as they referred him to Holtz for an immunology consult; it was not until Dr. Thorson examined E.E.M. at Holtz that he received the appropriate diagnosis and treatment.

Dr. Blinman also testified that the standard of care required JDCH's pediatric surgeons to, at the very least, recommend a CT Scan following their examination of E.E.M. on January 1, 2018, which would likely then have necessitated an exploratory surgical procedure to determine a

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he needed to function properly (like white blood cells, which are critical for staving off infections, and for healing). Despite this diagnosis, Dr. Thorson testified that he could not say what caused E.E.M.'s initial bowel perforation, and Dr. Thane Blinman, a medical expert retained in the lawsuit filed in this matter, testified that there is no known association between Schwachman-Diamond Syndrome and bowel perforations.

[11] The record also reveals that a physician assistant and several residents doing a surgical rotation assessed and/or treated E.E.M.; however, these healthcare providers were, at all times pertinent to the instant matter, working under the supervision of one or more of the above-mentioned providers.

[12] According to Dr. Blinman, a "zebra hunt" refers to the old medical adage "when you hear hoofbeats, think horses, not zebras." This adage is often taught to medical students to demonstrate that healthcare providers should consider the most likely diagnoses first, and not waste time pursuing low-probability diagnoses (the "zebras" in this analogy).

diagnosis. However, these surgeons failed to order a CT Scan until January 3, 2018, and they never followed this up with any kind of surgical procedure to investigate the findings. Indeed, it was not until January 6, 2018, in the care of Dr. Thorson at Holtz, that E.E.M. first received any kind of surgical intervention.

Ultimately, Dr. Blinman explained, the delays in E.E.M.'s diagnosis and surgical intervention had tragic consequences for E.E.M., as intestinal injury is progressive in nature, advancing from the initial point of injury, from which recovery is possible, to irreversible damage, from which recovery is impossible. Had JDCH's surgeons operated on E.E.M. on or before January 1, 2018, Dr. Blinman opined that they would likely have found a segment of irreversibly-damaged small bowel, for which a temporary ostomy might have sufficed, but they would likely have prevented the irreversible damage to the remainder of E.E.M.'s small intestine, and what ultimately became, for E.E.M., an "intra-abdominal catastrophe."

Litigation

The Claimants, as co-personal representatives of the estate of E.E.M., sued the Hospital District for medical malpractice, filing an Amended Complaint in the matter on October 19, 2023; therein, the Claimants alleged wrongful death damages, including for any medical or funeral expenses and pain and suffering. On April 5, 2024, the Claimants settled with the Hospital District for $500,000, which has since paid the $300,000 Florida's sovereign immunity law, codified in s. 768.28, F.S., authorized it to pay. This leaves in question the outstanding settlement balance of $200,000.

Collateral Sources

The Claimants also named as co-defendants in the lawsuit the healthcare providers who attended E.E.M. at JDCH, in their individual capacities, and Kidz Medical Services, Inc., a privately-owned multispecialty healthcare group under contract with the Hospital District to provide the services of pediatric healthcare specialists to JDCH; several of these specialists assessed and/or treated E.E.M. during the course of his admission and stay at JDCH. According to the record, the Claimants settled the claims as to Kidz Medical Services, Inc., and the individual healthcare providers; however, the terms of this settlement are subject to a non-disclosure agreement and, thus, not a part of the record.

CONCLUSIONS OF LAW

House Rule 5.6(b)

Pursuant to House Rule 5.6(b), settlement agreements are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the Special Master must make findings of fact and conclusions of law which support the claim.

Medical Malpractice

The Claimants allege that the Hospital District, through its employees and agents, committed medical malpractice, a form of negligence, in the injury and ultimate death of E.E.M. An ordinary negligence cause of action arises when someone fails to exercise that degree of care which an ordinarily prudent person would exercise, thereby causing injury to the person or property of another.[13] However, a medical malpractice cause of action more specifically arises when a healthcare provider[14] improperly renders, or fails to render, medical care or services.[15]

[13] *Carraway v. Revell*, 116 So. 2d 16 (Fla. 1959).
[14] Florida law defines a "healthcare provider," for the purposes of a medical practice action, as a licensed physician, osteopath, podiatrist, optometrist, dentist, chiropractor, pharmacist, hospital, or surgical center. S. 766.101(2)(b), F.S.
[15] The distinction between ordinary negligence and medical malpractice matters in Florida, as Florida law imposes additional requirements for bringing a medical malpractice action, including a pre-suit investigation to determine

In order to prevail in a medical malpractice action, the plaintiff must prove the following four elements:

- The healthcare provider owed a duty to use an ordinary standard of care, skill, and treatment;
- The healthcare provider breached that duty;
- The healthcare provider's breach proximately caused the plaintiff's injury; and
- The plaintiff suffered damages as a result of the injury.[16]

Each of these elements is discussed in turn, below.

Duty

Unlike most duties, in a medical malpractice action, the healthcare provider's duty to the patient is explicitly relational: in short, healthcare providers owe a duty of care to their patients.[17] Thus, the existence of a relationship between a healthcare provider and a patient is an essential element of a medical negligence cause of action because it is that relationship that gives rise to the healthcare provider's duty of care.[18]

In the instant matter, the record reflects that the Hospital District, through its physicians at JDCH, undertook to render medical care to E.E.M. when his parents brought him to JDCH on December 26, 2017, and left him in their care over the subsequent days. Thus, I find that E.E.M. was a patient of the Hospital District's physicians at JDCH, and that, consequently, the physicians owed a duty to E.E.M. to meet the professional standard of care in diagnosing him and providing appropriate treatment.

Breach

Under Florida law, the prevailing professional standard of care for a healthcare provider is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.[19] Expert testimony is generally required to establish the standard of care prevalent in a particular medical field, and, thus, whether a breach of that standard occurred in a particular case.[20]
In the instant matter, Dr. Blinman testified that the prevailing professional standard of care required both the timely diagnosis of E.E.M.'s bowel obstruction and timely surgical intervention. However, the testimony of both Dr. Blinman and Dr. Thorson reveals that the Hospital District's physicians not only failed to timely diagnosis E.E.M.'s bowel obstruction, they failed to diagnosis the obstruction altogether; as a result of this failure, the testimony reveals that the Hospital District's physicians also failed to provide E.E.M. with timely surgical intervention. Indeed, Dr. Blinman's testimony is clear that, even had the diagnosis not been readily apparent, timely surgical intervention in the form of an exploratory laparotomy would have been the appropriate course of action; the record reveals that this is the very course of action Dr. Thorson took upon E.E.M.'s arrival at Holtz, as the exploratory laparotomy was necessary to confirm the diagnosis suggested by the imaging and his examination of E.E.M. Further, though the Hospital District is not admitting liability in this matter, it presented no expert testimony to refute the assertions of either Dr. Blinman or Dr. Thorson. Based on the foregoing, I find that the Hospital District, through its physicians, breached the prevailing professional standard of care in providing medical care to E.E.M. at JDCH on and after December 26, 2017.

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whether reasonable grounds exist to believe medical malpractice occurred, a corroborating opinion on the existence of medical malpractice by a qualified medical expert, and the giving of a notice of intent to initiate a lawsuit to the defendant at least 90 days before filing. Further, until 2023, a plaintiff generally had four years to bring an ordinary negligence action from the point he or she discovered, or reasonably should have discovered, the injury but generally only two years to bring a medical malpractice claim from such point; the passage of 2023 HB 837 made the statute of limitations for both causes of action two years. Chapter 766, F.S.; s. 95.11(5), F.S.; *O'Shea v. Phillips*, 746 So. 2d 1105 (Fla. 4th DCA 1999) (citing J.*B. v. Sacred Heart Hosp. of Pensacola*, 635 So. 2d 945, 949 (Fla. 1997)).

[16] S. 766.102, F.S.

[17] *Torres v. Sarasota County Public Hosp. Bd.*, 961 So. 2d 340 (Fla. 2d DCA 2007).

[18] *Pate v. Threlkel*, 661 So. 2d 278 (Fla. 1995).

[19] S. 766.102, F.S.

[20] *Torres v. Sullivan*, 903 So. 2d 1064 (Fla. 2d DCA 2005).

Causation

Under Florida law, the existence of a medical injury does not, by itself, create any inference or presumption of negligence against a healthcare provider.[21] Instead, to sustain a medical malpractice claim, Florida law requires the plaintiff to prove that the injury he or she suffered directly resulted from the medical care or treatment received from the defendant healthcare provider.[22]

In the instant matter, the record is clear that, although no evidence suggests that E.E.M.'s bowel obstruction was itself the result of medical negligence, the failure of the Hospital District's physicians to diagnose and treat the bowel obstruction led to E.E.M. suffering a bowel perforation, which they also failed to diagnose and treat. As Dr. Blinman explained, had the surgeons at JDCH timely operated on E.E.M., they would likely have prevented the extensive, irreversible damage to E.E.M.'s small intestine, and what ultimately became, for E.E.M., an "intra-abdominal catastrophe" that led to the loss of his entire intestine and, ultimately, contributed to his very early death at the age of seven. Based on the foregoing, I find that the injuries E.E.M. received directly resulted from the medical care he received from the Hospital District and its physicians at JDCH on and after December 26, 2017.

Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.[23] Actual damages may be "economic damages" (that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care) or "non-economic damages" (that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law).[24]

At the special master hearing held in this matter, the Claimants testified that they have no outstanding medical bills or liens, and all costs have been paid except for those costs connected to bringing the instant claim bill. Thus, the Claimants are primarily now alleging damages for their pain and suffering connected to the injury and eventual death of their son, E.E.M., due to the injuries he suffered while under the care of healthcare providers at JDCH.
That the Claimants experienced, and continue to experience, pain and suffering was evident from their testimony. They spoke of watching their son suffer and his condition worsen as his healthcare providers ignored their repeated requests for an exploratory laparotomy to investigate the cause of his obvious gastrointestinal distress. They also spoke of the complete disruption it caused to their family of five, as they never left E.E.M. alone during his admissions at JDCH and Holtz, and Mrs. Miller ultimately took a break from her career to provide the at-home care E.E.M. required after discharge while Mr. Miller continued to work to support their family. Based on the foregoing, I find that the Claimants suffered damages due to the medical care E.E.M. received while at JDCH, which care amounted to medical negligence.

Respondeat Superior

Under the *respondeat superior* doctrine, an employer may be vicariously liable for medical negligence when its agent or employee, who is a healthcare provider, negligently renders medical care or services within the course and scope of his or her agency or employment.[25] For conduct to be considered within the course and scope of a healthcare provider's employment, such conduct must have:

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[21] S. 766.102(3)(b), F.S.
[22] *Nat'l Deaf Academy, LLC v. Townes*, 242 So. 3d 303 (Fla. 2018) (citing *Quintanilla v. Coral Gables Hosp., Inc.*, 941 So. 2d 468, 469 (Fla. 3d DCA 2006).
[23] *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).
[24] S. 766.202, F.S.; FLJUR MEDMALP § 107.
[25] S. 766.102, F.S.; *Nat'l Deaf Academy*, 242 So. 3d at 307*; Weinstock v. Groth*, 629 So. 2d 835 (Fla. 1993).

- Been of the kind for which the healthcare provider was employed or otherwise contracted with to perform;
- Occurred within the time and space limits of his or her employment; and
- Been due at least in part to a purpose serving the employment.[26]

In the instant matter, the record reveals that the healthcare providers who attended to E.E.M. at JDCH on or after December 26, 2017, were, at all times relevant to the instant matter agents or employees of JDCH and, consequently, of the Hospital District. Further, the record is clear that JDCH hired or otherwise contracted with such healthcare providers to provide medical care to children seen in JDCH's emergency room or admitted for inpatient care; that their assessment and treatment of E.E.M. occurred within the time and space limits of their agency or employment; and that their assessment and treatment of E.E.M. served the purposes of their employment or agency with JDCH and the Hospital District. Based on the foregoing, I find that, under the *respondeat superior* doctrine, the Hospital District is liable for the negligence of the healthcare providers who treated E.E.M. at JDCH on or after December 26, 2017.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimants' Position: The Claimants assert that they are entitled to the balance of the settlement amount, totaling $200,000. In support of their position, the Claimants assert that the Hospital District was negligent through the actions of its employees or agents, causing E.E.M.'s injury and eventual death and their own pain and suffering.

Respondent's Position: The Hospital District does not admit liability in the injury or eventual death of E.E.M. but supports the passage of the claim bill as a reasonable resolution of the dispute.

ATTORNEY AND LOBBYING FEES

Under the terms of the claim bill, attorney fees may not exceed 25 percent of the total award (that is, $50,000). Further, lobbying fees are limited by agreement of the parties to five percent of the total award (that is, $10,000).

RECOMMENDATION

Based on the foregoing, I recommend that CS/HB 6525 be reported FAVORABLY.

Respectfully submitted,

CAITLIN R. MAWN,
House Special Master

[26] *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).