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CIVIL ACTION NO. 23-CI-4748

JEFFERSON CIRCUIT COURT
DIVISION TEN
JUDGE PATRICIA "TISH" MORRIS

PATRICIA SKEETERS and
MICAH SKEETERS — PLAINTIFFS

v.

DEFENDANTS' TRIAL MEMORANDUM

UNIVERSITY MEDICAL CENTER, INC., et al. — DEFENDANTS

* * * * *

Defendants University of Louisville Physicians, Inc. ("ULP")Dr. Russell Farmer, and Dr. Shan Biscette, by counsel, pursuant to the Court's Civil Jury Trial Order, submit their Trial Memorandum for the Court's consideration.

STATEMENT OF FACTS

This is a medical malpractice action. Plaintiffs allege that Defendant physicians, colorectal surgeon Dr. Russell Farmer and minimally invasive gynecologic surgeon Dr. Shan Biscette, were negligent in their preoperative planning for Plaintiff, Patricia Skeeters; and that, specifically, proceeding with a procedure to excise a small endometrial implant from the rectum without a preoperative bowel preparation breached the standard of care and caused Mrs. Skeeters to sustain injuries. Her husband, Micah Skeeters, also has a claim for loss of consortium.

Patricia Skeeters had Stage IV endometriosis. Endometriosis is a painful condition that occurs when endometrial tissue grows outside the uterus. While this had been causing Mrs. Skeeters to suffer chronic pain, in 2022, her pain worsened, leading her to seek care with her general OBGYN, Dr. Shannon Holt. Dr. Holt discussed potential options with Mrs. Skeeters, who was interested in a hysterectomy. Due to the complexity of Mrs.

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Skeeters' condition, Dr. Holt referred her to Dr. Biscette, an OBGYN with specialized training in minimally invasive surgery. An appointment was made for August 2022.

Before Mrs. Skeeters could make it to that appointment, her pain worsened significantly, causing her to present to the emergency department at University of Louisville Hospital ("ULH") on July 6, 2022. She reported 8/10 lower left quadrant pain. While in the ED, Mrs. Skeeters was seen by an OBGYN resident, who assessed her and prescribed pain medication. The resident also contacted Dr. Biscette's office, which made an appointment for Mrs. Skeeters to be seen the next day.

At that office visit on July 7, 2022, Dr. Biscette spoke with Mrs. Skeeters about her options. Mrs. Skeeters desired in hysterectomy for surgical management of her endometriosis. Dr. Biscette provided informed consented to Mrs. Skeeters for the hysterectomy that day after a discussion of the risks and benefits. Although Mrs. Skeeters had CT imaging during her ED visit, Dr. Biscette ordered a pelvic ultrasound to better image Mrs. Skeeters' pelvic area. Mrs. Skeeters underwent that pelvic ultrasound on July 18. It revealed several areas of endometriosis, as well as an area of bowel wall thickening (1.3 x 1 x 1.1 cm in size) near the recto-vaginal septum that was possibly endometriosis.

Mrs. Skeeters presented for another preoperative visit on August 4, 2022, at which time she underwent collection of a specimen for a PAP smear. Dr. Biscette documented in her office visit note that she would consult general surgery for a pre-surgery consult to address the potential rectovaginal nodule noted on the pelvic ultrasound.

Dr. Biscette contacted Dr. Farmer by phone for this pre-surgery consult. Dr. Biscette and Dr. Farmer had worked together and regularly collaborated on the care of endometriosis patients with possible bowel involvement for several years. Dr. Biscette informed Dr. Farmer about the patient's surgery, which had been scheduled for the

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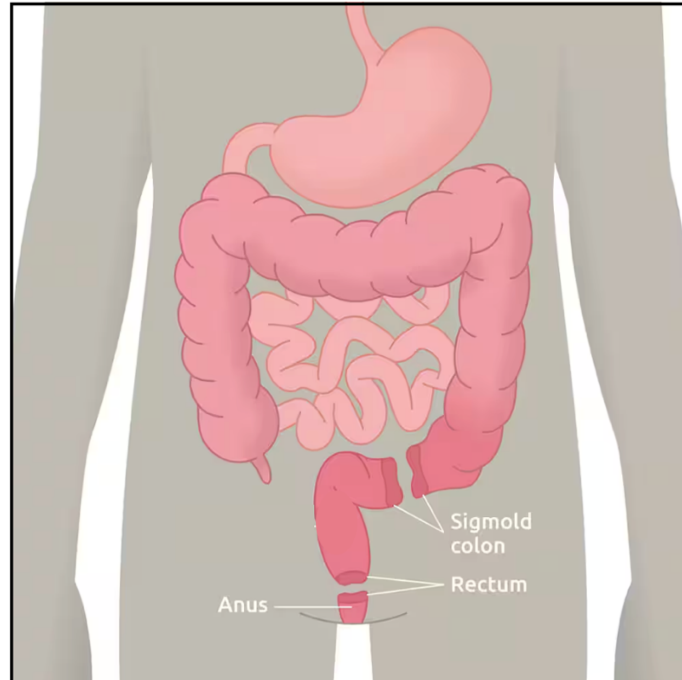
following Monday. She also informed him about the patient's presentation, and the likely plan for surgery. Dr. Farmer agreed to be available, if needed, to assist in the OR. While he did not personally review Mrs. Skeeters' medical records prior to the day of surgery, his colorectal surgery fellow, Dr. Hillary Simon, reviewed those records on his behalf, so that she could present the details of Mrs. Skeeters' case to the colorectal surgery team (including Dr. Farmer) when they discussed the cases for the week.

From the information provided by Dr. Biscette, Dr. Farmer planned to perform a disc excision for Mrs. Skeeters, which is a relatively minimal surgery. It may be helpful to briefly discuss an important medical distinction in this case between two types of different bowel surgeries. The first is a rectal resection, also referred to as a segmental resection, because it involves transecting the rectum in two places to remove a segment of the rectum and then joining together the pieces through an anastomosis (usually done with a stapler):



This more involved procedure is often performed to remove entire segments of the rectum that are affected by things like rectal cancer. In Dr. Farmer's practice, he sees patients in his

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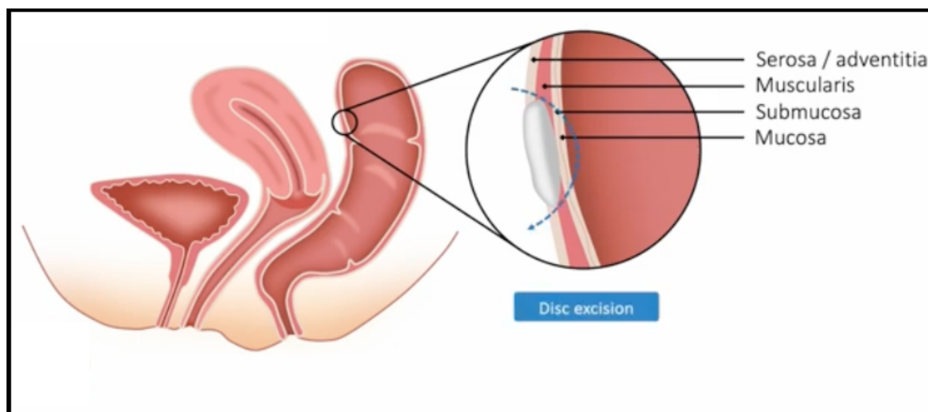
office before these rectal/segmental resections; and he also instructs them to do a preoperative bowel preparation, given that he would be completely transecting the intestinal vessel in the rectal area in two places within the patient's pelvic area.

On the other hand, the procedure he planned for Mrs. Skeeters was a disc excision, which is commonly done for endometrial implants that are 3 cm or less in size. A disc excision involves making an incision into the surface of the rectum, excising the affected area from its surface, and then closing the surgical defect with sutures:



Dr. Farmer did not typically see patients in his office prior to a disc excision procedure. While he was often contacted by GYN surgeons about possible bowel endometriosis, he was seldom called to the OR to remove them; and often (as here) he had the information needed to plan the disc excision surgery from speaking with the GYN surgeon. He also did not order preoperative bowel preparation prior to these more minimal surgeries.

On August 5, 2022, the OBGYN minimally invasive surgery (MIGS) team met in the morning to discuss the following week's surgeries. When reviewing Mrs. Skeeters' case, the chief resident, Dr. Harjunisa Cubro, asked if they should order a bowel prep for Mrs. Skeeters "just in case" colorectal surgery might want this. Dr. Cubro ordered a GoLYTEly bowel prep to be called in to Mrs. Skeeters' pharmacy, Apothecare Pharmacy in Hardin County, which Dr. Biscette authorized. Dr. Cubro also called Mrs. Skeeters to inform her

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that the bowel prep had been ordered. Mrs. Skeeters did not answer her call, so she left Mrs. Skeeters a voicemail informing her that the bowel prep had been sent to her pharmacy and instructing her to take it on the night before her surgery.

Additionally, this same day, OBGYN resident Dr. Callyn Samuel also called Mrs. Skeeters and spoke with her about the surgery. Dr. Samuel discussed that Mrs. Skeeters' PAP results had not come back, and that there was a risk to proceeding with a hysterectomy without that information (as there may be other gynecologic issues that would be unknown without those results). Dr. Samuel noted that, due to Mrs. Skeeters' long history of chronic pain that was interfering with her daily activities, and her desire to proceed with surgery as soon as possible, they made the shared decision to proceed.

On August 8, 2022, Mrs. Skeeters presented to ULH for surgery. She testified that, while she and her husband were driving to the hospital, she received an alert on her phone notifying her that she had a voicemail; and that this was the first time she heard the voicemail from Dr. Cubro about the bowel prep. After she arrived at ULH, she told several individuals, including a nurse and Dr. Biscette, that she had not done the bowel prep. It is undisputed that bowel prep was not needed for Dr. Biscette's hysterectomy procedure.

Upon arriving at ULH that day, Dr. Farmer spoke with Patricia and Micah Skeeters in the pre-op area. He introduced himself, explained that he wasn't usually called in to the OR in these situations, and explained that, if he was here, he expected to do a minimal surgery (and explained the disc excision procedure). He also obtained informed consent for this procedure, after explaining the risks of the surgery, including but not limited to the risk of a leak, which can happen in 5-10% of bowel surgeries and is a known complication.

After learning that Mrs. Skeeters had not done her bowel prep, Dr. Farmer considered her presentation, and he decided that it would be appropriate to proceed with

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surgery. It was not certain that he would be needed to perform surgery; and, if he was, the surgery he would likely perform would be minimal. Additionally, in his clinical judgment, bowel preparation is not required before a disc excision procedure and proceeding without it did not pose any additional risk for post-operative complications for this type of surgery. He had performed disc excisions without preoperative bowel preparation numerous times without complications. He also knew that Mrs. Skeeters wanted to proceed with her surgery as soon as possible. Finally, he knew that if he was called to the OR, assessed the area, and determined that the situation required more complex intervention (if the implant was larger than could be dealt with through disc excision, or its removal would be more complicated), he would opt not to perform the colorectal surgery that day. He discussed with Mrs. and Mr. Skeeters that he believed it was appropriate to proceed with surgery despite her lack of bowel prep.

Dr. Biscette took Mrs. Skeeters to surgery. In addition to the hysterectomy, she also removed endometrial implants from the left and right pelvic sidewall. She then called Dr. Farmer in to consult in the OR. After Dr. Biscette identified the implant on the rectum, Dr. Farmer assessed the area. He confirmed that it was very small, and that, even though the patient had not done a preoperative bowel prep, it was reasonable to remove it with a disc excision. He excised the implant, closed the area with a suture, and performed an air leak test to confirm there was no leak. The remainder of the surgical case was completed, and Mrs. Skeeters was taken to the recovery room and thereafter admitted overnight.

The following day, Mrs. Skeeters was discharged home after meeting post-operative goals (she was able to get out bed, urinate, and pass gas). She went home, but returned to ULH on August 12, 2022 with severe pelvic pain. Dr. Farmer took her back to the OR on August 15, 2022. At that time, he identified a dehiscence of the suture line from the disc

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excision that had resulted in a pelvic leak, and he performed a colostomy. It is undisputed that Mrs. Skeeters had a complicated post-operative course. Dr. Farmer reversed her colostomy in February 2023. Her last office visit with him was in March 2023.

LIABILITY

Plaintiffs have disclosed two experts, OBGYN generalist Dr. Cynthia Brown, and general surgeon Dr. Blaine Nease. Dr. Brown is expected to testify that Dr. Biscette was required to do more with respect to preoperative planning for Mrs. Skeeters, including ensuring that the colorectal surgeon saw the patient in the office preoperatively or that he had adequate information to plan for surgery; she should have confirmed that Mrs. Skeeters received the voicemail regarding bowel prep; and she should have had a preoperative discussion with Mrs. Skeeters about the additional risks posed by proceeding with surgery without bowel prep. Dr. Nease is expected to testify that the standard of care required Dr. Farmer to see Mrs. Skeeters in his office before surgery and order mechanical and antibiotic bowel prep for her; and that it was inappropriate for Dr. Farmer to proceed with his surgery without the patient having completed bowel prep. Both experts testified to an opinion that, more likely than not, the lack of bowel prep caused Mrs. Skeeters to have a pelvic leak and resulted in her complicated course – although Dr. Brown conceded that she is not qualified to opine about the causes of anastomotic leak.

Dr. Matthew Siedhoff – who, like Dr. Biscette (but unlike Dr. Brown), is trained as a minimally invasive gynecologic surgeon – will rebut Dr. Brown's opinions. He will testify at trial that Dr. Biscette met the standard of care. She appropriately reached out to Dr. Farmer for a pre-surgery consult about Mrs. Skeeters' care and his possible involvement in the OR; and there was no duty to ensure that Dr. Farmer saw this patient in his office preoperatively, as such a visit was unnecessary here. Dr. Cubro's order of mechanical

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bowel prep for this patient went above and beyond the standard of care for what is required for a disc excision, and the standard of care did not require that Dr. Biscette take additional action to convey the bowel prep information to Mrs. Skeeters. Moreover, Dr. Siedhoff performs disc excisions himself when he encounters endometrial implants on the bowel that are less than 3 cm in size. He does not order preoperative bowel prep for his patients, and none of them have developed postoperative leaks. There was no additional risk to Mrs. Skeeters due to the lack of a bowel prep that required any additional informed consent. Finally, Dr. Siedhoff will testify that pelvic leaks are a known risk and potential complication of bowel surgery even with preoperative bowel prep, and that it is not possible to attribute Mrs. Skeeters' outcome to the absence of such prep.

Dr. Bill Harb – who, like Dr. Farmer (but unlike Dr. Nease), is specially trained as a colorectal surgeon -- will rebut Dr. Nease's opinions. Dr. Harb will testify at trial that Dr. Farmer provided reasonable and appropriate colorectal surgery care to Mrs. Skeeters. Specifically, it is common for colorectal surgeons to be consulted preoperatively about potential endometriosis on the bowel, and it was unnecessary to see patients preoperatively prior to disc excision procedures to address that condition, particularly where the surgeon has sufficient information from the consult to plan his or her surgery. It was also unnecessary for Dr. Farmer to order preoperative bowel preparation where he planned on a minimal disc excision for this patient, as such a procedure does not require bowel prep. Further, he will testify it was reasonable for Dr. Farmer to proceed with surgery on August 8, 2022, and there were no additional risks to a disc excision without bowel prep that required disclosure during an informed consent discussion. Finally, Dr. Harb will testify that Mrs. Skeeters' complicated course was the result of a pelvic leak, which is a known

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complication of bowel surgery and occurs in 10% of cases – and that it is impossible to attribute the leak to an absence of bowel prep here.

I. Issues of Fact

A. Were Dr. Biscette or Dr. Farmer negligent?

A medical practitioner has a duty to use that degree of care and skill which is expected of a reasonably competent practitioner in the same class to which the provider belongs, acting in the same or similar circumstances. *Andrew v. Begley*, 203 S.W.3d 165, 170 (Ky. App. 2006) (*quoting Blair v. Eblen*, 461 S.W.2d 370, 373 (Ky. 1970)). The presumption of negligence is never indulged from the mere evidence of mental pain and suffering of the patient, or from failure to cure, or from poor or bad results. *Id.* (*quoting Meador v. Arnold*, 94 S.W.2d 626, 631 (Ky. 1936)). The burden of proof is upon the Plaintiffs to prove the negligence of the practitioner, and that such negligence was the proximate cause of the injury and damages. *Id.*

a) Did these physicians exercise the same degree of skill and care as a reasonable physician under similar circumstances?

The care and treatment that Dr. Biscette and Dr. Farmer provided to Patricia Skeeters met the standard of care. There will be expert proof, as detailed above, that their care and treatment of Patricia Skeeters was reasonable and appropriate.

b) Was the alleged breach of the standard of care a substantial factor that caused Justin Smith's death?

To be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent. *Deutsch v. Schein*, 597 S.W.2d 141, 144 (Ky. 1980). The negligence must also be a substantial factor in bringing about the harm. *Id.* The word "substantial" is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable [people] to regard it as a cause. *Id.*

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Here, Patricia Skeeters had a difficult course as a result of a pelvic leak, which is a known risk and potential complication of her surgery, and it occurs in 10% of bowel surgery cases even where preoperative bowel preparation is carried out. It is entirely speculative to attribute her leak and associated complications to a lack of bowel prep as opposed to an inherent complication of her surgery.

B. Was University of Louisville Physicians negligent?

Plaintiffs apparently contend that University of Louisville Physicians, which employed Dr. Biscette and Dr. Farmer, was negligent in not having protocols to coordinate procedures in which both minimally invasive gynecologic surgery and colorectal surgery are involved; and in not having standardized bowel preparation procedures. There is no need for protocols to coordinate procedures between physicians, as this is regularly done through communication between doctors and departments. Additionally, the use of preoperative bowel preparation is a matter of individual physician judgment, applied on a patient-by-patient basis. It would not be appropriate to override an individual physician's clinical judgment on this matter.

II. Issues of Law

A. If the jury finds for Plaintiffs, did either Dr. Biscette or Dr. Farmer act in reckless disregard for the life, safety or property of others, including Patricia Skeeters, so as to entitle Plaintiffs to punitive damages?

Plaintiffs state that they seek over $20 million for punitive damages in this matter. Under Kentucky law, punitive damages are only permitted in certain, limited circumstances that are not present here. Specifically, punitive damages are permitted under Kentucky statute only upon a clear and convincing showing that the defendant acted with "oppression, fraud or malice"; and are only permitted under Kentucky common law upon a showing of "gross negligence". Punitive damages are not authorized where a defendant

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has engaged in inadvertence, mistake, errors of judgment, or ordinary negligence. RESTATEMENT (SECOND) OF TORTS § 908 cmt. B (1979). Under Kentucky statute (KRS 411.184):

- "Oppression" is defined as "conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship";
- "Fraud" is defined as an "intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff"; and
- "Malice" means "either conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm".

Id. Gross negligence requires more than a failure to exercise ordinary care; it requires a finding of a failure to exercise even slight care, such as to demonstrate a wanton or reckless disregard for rights of others. *Phelps v. Louisville Water Co.*, 103 S.W.3d 46, 51-52 (Ky. 2003).

The distinguishing characteristic in cases where punitive damages are authorized is "whether the misconduct 'has the character of outrage.'" *Id.* at 389 (*citing Hensley v. Paul Miller Ford Co., Inc.*, 508 S.W.2d 759, 762 (Ky. 1974)). The threshold for punitive damages is "misconduct involving something more than merely commission of the tort". *Blue Sky Inc. v. Millers Lane Ctr., LLC,* 2020 WL 4500590 (Ky. App. July 17, 2020) (copy of case attached as Exhibit F) (*quoting Fowler v. Mantooth,* 683 S.W.2d 250, 252 (Ky. 1984)). The "something more" is "conscious wrongdoing" or malice. *Id.* Malice may be implied from outrageous conduct so long as the conduct is sufficient to evidence "conscious wrongdoing." *Id.*

For reasons that have already been detailed in Defendants' Motion for Partial Summary Judgment, which is incorporated herein by reference, it is Defendants' position that the evidence will not support a jury instruction for punitive damages at trial. This

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Court declined to dismiss Plaintiffs' claim for punitive damages at the pretrial stage, but Defendants intend renew this argument by moving for a directed verdict at the close of Plaintiffs' proof.

B. *If the jury finds for Plaintiffs with regard to Dr. Arnold's gross negligence, did ULP authorize, ratify, or should ULP have anticipated the conduct in question?*

Under KRS 411.184(3), punitive damages cannot be assessed against a principal or employer "for the act of an agent or employee unless such principal or employer authorized or ratified or should have anticipated the conduct in question." Per KRS 411.184(2), Plaintiffs must prove by *clear and convincing evidence* not only that the employee was grossly negligent, but also that the employer's conduct satisfies the requirements of KRS 411.184(3).

Plaintiffs will apparently argue ULP "ratified" the conduct of Dr. Biscette and Dr. Farmer. For the imposition of punitive damages, "an employer's ratification of an employee's offensive conduct requires two elements: 1) an after-the-fact awareness of the conduct; and 2) an intent to ratify it." *Saint Joseph Healthcare, Inc. v. Thomas*, 487 S.W.3d 864, 874 (Ky. 2016). Kentucky is the only state with a statute that so broadly limits vicarious liability for punitive damages. *Berrier v. Bizer*, 57 S.W.3d 271, 283 (Ky. 2001). Although KRS 411.184(3) permits a court to impose liability upon an employer for the actions of an employee, "it also imposes significant limits on that liability." *Dean v. Pike Elec. Co.*, 2013 WL 2009900 at *1 (W.D. Ky. May 13, 2013) (*citing McGonigle v. Whitehawk*, 481 F.Supp.2d 835, 841-42 (W.D. Ky. 2007) for the proposition that "Very few cases on record have recognized vicarious liability for punitive damages"). The Kentucky Supreme Court has only allowed vicarious liability for punitive damages "when the employer was aware that the employee had previously engaged in similar unacceptable behavior or when the employer condoned the wrongful action taken by the employee." *Jones v. Blankenship,* 2007

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WL 3400115 at *3 (E.D. Ky. Nov. 13, 2007) (*citing Estate of Presley v. CCS of Conway,* 2004 WL 11799448 (W.D. Ky. May 18, 2004)). There is no indication of any previous "unacceptable behavior" by either physician Defendant in this case, nor did they engage in any "wrongful action."

In *University Medical Center v. Beglin*, 375 S.W.3d 783, 794-95 (Ky. 2011), the Supreme Court of Kentucky provided guidance as to how the KRS 411.184(3) factors should be applied. "Ratification" is, in effect, after-the-fact approval of the conduct. As the Kentucky Court of Appeals discussed in *Big Spring Assembly of Good, Inc. v. Stevenson*, the RESTATEMENT (THIRD) OF AGENCY § 4.01 (2006) sets forth a more thorough definition of ratification:

> (1) Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.
>
> (2) A person ratifies an act by
>
> (a) manifesting assent that the act shall affect the person's legal relations, or
>
> (b) conduct that justifies a reasonable assumption that the person so consents.
>
> (3) Ratification does not occur unless
>
> (a) the act is ratifiable as stated in § 4.03,
>
> (b) the person ratifying has the capacity as stated in § 4.04,
>
> (c) the ratification is timely as stated in § 4.05, and
>
> (d) the ratification encompasses the act in its entirety as stated in § 4.07.

Id. at *7. To ratify employee misconduct, an employer must have full knowledge of the material facts surrounding the misconduct and intention to ratify same. *Id.* (*citing Papa John's Int'l Inc. v. McCoy*, 244 S.W.3d 44 (Ky. 2008) and RESTATEMENT (THIRD) OF AGENCY § 4.06 (2006)).

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As the Court recognized in *Beglin,* the verb "to ratify" means "to approve and sanction formally: confirm (ratify a treaty)." *Id.* at 794. An employer cannot be regarded as having ratified conduct of its employees simply by denying that the conduct occurred or by mounting a legal defense against claims arising from the conduct. *St. Joseph Healthcare, Inc. v. Thomas*, 487 S.W.3d 864, 874 (Ky. 2016). Moreover, retention of an employee without reprimand following wrongdoing does not amount to ratification. *Patterson v. Tommy Blair, Inc.*, 265 S.W.3d 241 (Ky. App. 2007). Even where a podiatrist began operating on the wrong foot, hospital administration permitted him to continue with the correct foot after the mistake was discovered, and an "allegedly shoddy investigation" which was "lackadaisical at most" took place, this is not ratification. *Griffey v. Adams*, 2018 WL 3118185 (W.D.Ky. June 25, 2018) (*please see, also, Beglin, supra* in which a poor quality investigation did not amount to approval of the conduct). Indeed, it is "very difficult to obtain punitive damages against an employer for the negligent acts of its employees." *Jones, supra* at *4. In the few cases in which this has occurred, the facts were truly egregious and showed not only knowledge, but active post-event involvement by the employer that clearly equated to ratification.[1]

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[1] In *St. Joseph, supra*, the estate of a decedent (who was diseased, paraplegic, uninsured and indigent) sued a hospital and ER staff after he was repeatedly discharged when he presented with abdominal pain, nausea, vomiting, and severe constipation; after his final discharge, he was warned that he would be arrested if he returned. He refused to go back to the hospital and died. The Supreme Court found that the proactive nature of the concerted effort to keep decedent away over a period of 16 hours supported a reasonable inference that the hospital's management was aware of what was happening, and although they did not authorize it, they ratified it. In *MV Transp., Inc. v. Allgeier,* 433 S.W.3d 324, 338 (Ky. 2014), a wheelchair-bound passenger sued the company responsible for her paratransit bus service after she fell due to misalignment of the wheelchair lift with such force that the femur of both legs splintered, causing her extraordinary pain. Rather than care for her injuries, the company spent their taking photographs of the scene and sequestering the driver to follow its policy of guarding against "fraudulent and excessive liability claims". For over 20 minutes, the plaintiff was lying in intense pain on the metal lift in sub-freezing weather covered only with a thin blanket a nearby resident had brought to her. The Supreme Court of Kentucky found that under these facts, the company "placed its own financial self-interests ahead of [the plaintiff's] urgent need for medical assistance." *Id.*

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The proof in this case will not support a jury instruction for punitive damages against any Defendant. Moreover, the proof will not support a finding that ULP "ratified" any alleged tortious conduct by either Dr. Biscette or Dr. Farmer under these standards of Kentucky law. As such, no punitive damages instruction should be submitted to the jury with respect to any Defendant.

DAMAGES

In this case, Plaintiffs seek damages for Patricia Skeeters' past and future medical expenses, past and future lost wages, pain and suffering, and Micah Skeeters' loss of spousal consortium.

I. Issues of Fact

A. *If the jury finds for Plaintiffs, can Patricia Skeeters recover for past and future medical expenses?*

If the jury finds that Defendants were negligent in their care and treatment of Patricia Skeeters, the jury may consider whether to award her an amount to compensate her for past and future medical expenses. Kentucky courts have long held that:

> The general rule of damages is that *necessary and reasonable* expenses for medical services may be recovered in a suit for personal injuries. 25 C.J.S. Damages § 47(2), p. 761; 22 Am.Jur.2d Damages, sec. 102, p. 149. We assume that the reason for allowing such recovery is that the services are calculated to have been remedial of the injuries.

Langnehs v. Parmelee, 427 S.W.2d 223, 224 (Ky.App. 1967) (emphasis in original). In a personal injury case, the jury should not "accept the medical bills as submitted by the plaintiff," as this "would amount to a rubber stamping of a verdict." *Lewis v. Grange Mut. Cas. Co.*, 11 S.W.3d 591, 593 (Ky.App. 2000).

It is a plaintiff's obligation, as the party with the burden of proof and persuasion on the elements of their negligence claim, to show that they are entitled to the damages sought – that they are casually related to the alleged negligence in the case:

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> In presenting the claim for damages, the burden of pleading and proving the damages is on the plaintiff. The pleadings are expected to raise the issue of damages while the evidence presented in the case will furnish the basis for recovery. The pleadings must first give fair notice of the type of relief that is being sought. Then the evidence in the case must prove the damages to a reasonable certainty.

Monroe v. Wright, 2022-CA-1254-MR, 2024 Ky.App. Unpub. Lexis 44 at *19 (Ky. App. Jan. 26, 2024)10 (*quoting* RONALD W. EADES, *General principles of recovery,* KY. L. OF DAMAGES § 1:4 (Feb. 2023 update)).

Plaintiffs listed a "medical expense summary and corresponding bills" on their Exhibit List. However, to date, it does not appear that Plaintiffs have produced any such summary, and it is unclear whether all bills for past medical expenses being sought have been provided. Without such documentation to support this claim, they cannot recover this element of damage at trial.

Similarly, there is no indication from the medical records provided that Mrs. Skeeters will require any specific medical care in the future, or that any further care (such as additional surgeries) have been scheduled.

If the jury finds for Plaintiffs, it will be charged with determining whether the past and future medical expenses claimed by Patricia Skeeters are *necessary and reasonable* due to the injuries she has experienced, and whether those damages have been proven by Plaintiffs to a reasonable certainty and supported by sufficient documentation and evidence.

B. *If the jury finds for Plaintiffs, can Patricia Skeeters recover for an impairment of her power to labor and earn money?*

If the jury finds that Defendants were negligent in the medical treatment of Patricia Skeeters, the jury may consider whether she has sustained a loss due to the impairment of her power to labor and earn money. Defendants dispute this element of damages. Any

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testimony regarding Patricia Skeeters' alleged impairment of the power to labor and earn money is purely speculative. While she apparently did not work for 3.5 months following her surgery on August 8, 2022, she has held a variety of positions since then; and, during the 2025-26 school year, she returned to work at Hardin County Public Schools, where she had worked at the time of her surgery. There does not appear to be any evidence that her ability to labor and earn money has been impaired as a result of Defendants' conduct.

C. *If the jury finds for Plaintiffs, has Micah Skeeters sustained a loss of services, assistance, aid, society, companionship, and conjugal relationship as a result of Defendants' medical care?*

Under KRS 411.145, a spouse may recover for the loss of "services, assistance, aid, society, companionship and conjugal relationship." Patricia and Micah Skeeters were married in November 2021. Following Mrs. Skeeters' surgery with Defendants in August 2022, they closed on a new home in December 2022, where they have raised their blended family together. Micah's parents testified that Patricia and Micah's relationship has "absolutely" become stronger because of the difficult course that Patricia has experienced.

If the jury finds for Plaintiffs, it will be charged with valuing the impact of Patricia Skeeters' medical complications on Micah Skeeters' marital relationship to his wife.

D. *If the jury finds for Plaintiffs, can Patricia Skeeters recover for pain and suffering?*

If the jury finds that Dr. Biscette or Dr. Farmer was negligent in their care and treatment of Patricia Skeeters, they may also consider whether Patricia Skeeters is entitled to recover for her pain and suffering. Kentucky law permits a jury to make an award of an amount that will fairly and reasonably compensate an injured party for whatever physical and mental suffering they believe from the evidence that the party has sustained or is reasonably certain to sustain in the future as a direct result of the alleged negligence.

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Patricia Skeeters experienced a difficult medical course following her August 2022 surgeries, including a colostomy; this was reversed in February 2023. She also experienced a rectovaginal fistula. However, from the medical records provided, it is unclear to what degree that has continued or impacts her today.

If the jury finds for Plaintiffs, it will be charged with valuing the pain and suffering that it believes Patricia Skeeters has experienced or is reasonably certain to experience.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2026, I electronically filed the foregoing with the Clerk of Court by using the Kentucky Court of Justice eFiling website, which will send a Notice of Electronic Filing and a hyperlink to the electronic document to all eFilers associated with the case. I further rely on Section 12(1) of the eFiling Rules of the Court of Justice which provides that transmission of a hyperlink to the electronic document constitutes service under CR 5.

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