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**Florida House of Representatives
Summary Claim Bill Report**

Bill #: HB 875; Relief of Relief/Tyler Giblin/Marion County Hospital District
Sponsor: Llorente
Companion Bill: SB 68 Sen. Dean
Special Master: Tony DePalma

Basic Information:

Claimants: Gina and Mark Giblin, individually and as natural parents and guardians of Tyler Giblin, their minor son.

Respondent: Munroe Regional Medical Center, a facility operated by Munroe Regional Health System, Inc., pursuant to a lease from the Marion County Hospital District. An opinion issued by the Attorney General's office on December 8, 2006 clarified that Munroe Regional Health System, Inc. was operating as an instrumentality of the hospital district, and, as such, was entitled to sovereign immunity under section 768.28, Florida Statutes.

Amount Requested: \$700,000

Type of Claim: Local. Result of a settlement agreement.

Respondent's Position: Agrees not to oppose and to fully cooperate with the claim bill process. Munroe Regional Health System, Inc. is self-insured up to \$2 million, and maintains an excess insurance policy above that amount. If passed, the claim will be paid from the general revenues of the hospital, and the Chief Financial Officer at Munroe Regional Medical Center reports that "the hospital has planned for this contingency and ... has the ability to pay the claims bill without detrimental impact to hospital operations or provision of any service at the hospital."

Collateral Sources: The Giblins receive monthly SSI payments in the amount of approximately \$600 for the benefit of Tyler.

Attorney's/Lobbying Fees: Consistent with the stated policy of the Speaker of the House of Representatives, no more than 25% of the total claim award may be paid by the claimant for attorney's fees, lobbying fees, costs, or other similar expenses. Claimant's attorney reports that lobbying fees for this claims bill are 4% of the gross award.

Prior Legislative History: This is the first year that this claims bill has been heard in the Florida Legislature

Procedural Summary: On February 24, 2006, the claimants filed a medical malpractice suit against Munroe Regional Health System, Inc., the hospital district, and several of the attending physicians responsible for the care of Tyler Giblin. In July 2007, the claimants entered into a mediated settlement agreement with Munroe Regional Health System, Inc., whereby Munroe Regional Health System, Inc., agreed to the entry of a Consent Final Judgment against it in the amount of \$900,000. Later that month, the circuit court entered an Order approving the structure of the parties' settlement agreement. Subsequent to this, the circuit court entered an amended Order approving the allocation of net settlement proceeds between the special needs trust established for the benefit of Tyler (75%) and his parents (25%). The Orders further authorized the reservation of \$1,838.09 for an outstanding Medicaid lien, and the reservation of \$645,401.76 for an outstanding Blue Cross Blue Shield lien, which counsel for the claimants was working to discharge in full. Of the settlement amount, \$200,000 has already been paid pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. The claimants received \$100,000 of this amount, and the claimants' attorney received the remaining \$100,000 (with \$50,000 going to fees, and \$50,000 going to associated costs). There are still outstanding costs of approximately \$135,000. The claimants suit against Tyler's attending pediatrician was eventually dismissed, because the Giblins did not want to "gamble with Tyler's money," as Mr. Giblin indicated at the Special Master's Hearing in December.

Facts of Case: Tyler Stephen Giblin was born via emergency caesarian section at Munroe Regional Medical Center in Ocala, Florida on December 14, 2004 with a heart rate in the 70s and evidencing extreme fetal distress. Unknown to his physicians at the time of Tyler's birth, the child was born with a seriously deformed heart as a result of a medical condition known as "hypoplastic left heart syndrome". Hypoplastic left heart syndrome is a rare congenital heart disease in which the left side of the heart is severely underdeveloped. Essentially, in a child presenting this condition, the left ventricle is malfunctioning because the valves leading into and out of the left ventricle – the mitral and aortic valves – are either not present or are insufficiently small. Without treatment, hypoplastic left heart syndrome is fatal, but with treatment an infant may survive.

Although an initial assessment of the newborn revealed no defects, Dr. Yves Lande-Pierre, Tyler's pediatrician, diagnosed a Grade II heart murmur shortly after the child's birth. Despite detecting the murmur, Dr. Pierre ordered no further cardiac consultation, requesting instead that attending nurses maintain "close observation" of the child.

Later that evening, Tyler's parents and grandparents noticed the child turning blue or purple throughout his body, and notified the nurses on staff. This discoloration is consistent with cyanosis, and the bluish or purplish hue of the skin during a cyanotic episode indicates that there may be decreased oxygen levels in the bloodstream. Despite Dr. Pierre's request to closely observe Tyler, the nurses did no record the event in Tyler's medical charts, and did not attempt to either contact or alert Dr. Pierre. The failure of Tyler's nurses to report this cyanotic episode to Dr. Pierre, especially considering her orders to "closely observe" Tyler following detection of a Grade II heart murmur, violated the generally-accepted standards of care for nursing personnel.

The following morning, without knowledge of the previous evening's cyanotic distress, Dr. Pierre re-examined Tyler and noted an increase in the gradation of his heart murmur – from a Grade II murmur to a Grade III murmur. At this point, a four-extremity blood pressure test and chest x-ray were ordered. Although the nurses administering the tests did not note any abnormalities, expert testimony supplied by the claimants cast doubts on whether normal results for a four-extremity blood pressure exam could even be obtained from a patient suffering from hypoplastic left heart syndrome. The nurses' failure to properly administer or interpret this four-extremity blood pressure test violated the generally-accepted standards of care for nursing personnel.

Subsequent to these examinations, Tyler suffered a second cyanotic episode later that same evening, and his parents and grandparents again reported the events to nursing staff. As before, the nurses failed to report the incident in Tyler's records and did not attempt to alert Dr. Pierre to the child's condition. The failure of Tyler's nurses to report this second cyanotic episode to Dr. Pierre, especially considering her orders to "closely observe" Tyler following detection of a Grade III heart murmur, violated the generally-accepted standards of care for nursing personnel.

Later that day, without knowledge of Tyler's two reported cyanotic episodes but likely in response to the increased heart murmur she observed, Dr. Pierre arranged for a cardiac consultation at Shands Hospital in Gainesville the next day following the child's scheduled discharge on December 16th, 2006. However, Tyler's condition rapidly deteriorated overnight before his scheduled discharge. At 5:00 a.m. on the morning of December 16th, the nurse noted that the child was dusky, pale, turning blue when crying and had a capillary refill that was delayed 3-4 seconds. Additionally, Tyler's blood pressure around this time indicated a left arm reading of 37/29, a right arm

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reading of 43/29, a left leg reading of 55/21, and a right leg reading of 53/26. In depositions submitted by the claimant, an expert noted that these blood pressures and other vital sign changes as well as changes in color and capillary refill was indication that Tyler's Patet Ductus Arterioses (PDA) was starting to close, and that he was going into an emergency medical deterioration. For a child suffering from hypoplastic left heart syndrome, the expert noted that closure of the PDA is a "catastrophic event".

Shortly thereafter, Dr. Pierre was notified and informed of Tyler's deteriorating condition. However, the nurse updating Dr. Pierre reported that the child was "stable", and Dr. Pierre did not arrive at the hospital until 6:45 a.m. Upon arrival, the child's oxygen saturations were dropping badly, his respiratory rate was extremely elevated, his capillary refill had gotten worse, he was experiencing a general cyanosis without crying, and he was "going into severe cardiovascular decompensation", according to expert testimony provided by counsel for the claimants. Dr. Pierre attempted to stabilize Tyler's heart condition and the child was transferred to Shands Hospital for further treatment.

Six days later, Tyler was transferred from Shands to Miami Children's Hospital where he successfully underwent the first stage of the Norwood operation, a three-stage surgical procedure especially for the palliative treatment of hypoplastic left heart syndrome. However, as a result of the trauma experienced by Tyler's heart during the three separate cyanotic periods over the preceding days, the possibility of completing the final two stages of the Norwood procedure was foreclosed for Tyler, and he was transferred back to Shands to await a heart transplant. On June 3, 2005, Tyler received a heart transplant.

Presently, Tyler shows major delays in important cognitive functions evidenced by deficits in speech and in imaginative play, according to a medical examination performed by Dr. Robert Baumann, professor of Neurology and Pediatrics at the University of Kentucky, in June, 2007. Baumann observed that Tyler's motor skills are likely mildly impaired, and noted that Tyler only speaks in single words and cannot follow two-step commands.

Special Master _____ Date _____

cc: Representative Llorente
Senator Dean
Judge Kent Wetherell, Senate Special Master