# IN THE SUPREME COURT OF OHIO

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| **STATE ex rel. THE TOLEDO HOSPITAL,** | : | **Case No. 2026-0765** |
| **Relator-Appellant,** | : | |
| | : | **On appeal from the** |
| **v.** | : | **Sixth District Court of Appeals** |
| | : | **Lucas County, Ohio** |
| **THE HONORABLE LORI OLENDER,** | : | |
| | : | **Court of Appeals Case No. [48] l-25-00294** |
| **Respondent-Appellee.** | : | |

## MERIT BRIEF OF AMICUS CURIAE, OHIO HOSPITAL ASSOCIATION, THE OHIO STATE MEDICAL ASSOCIATION, AND THE ACADEMY OF MEDICINE OF CLEVELAND AND NORTHERN OHIO IN SUPPORT OF APPELLANT

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## INTRODUCTION AND STATEMENT OF INTEREST OF AMICI CURIAE

This appeal extends beyond the liability of a single physician or hospital. It presents a question that affects the continued viability of Ohio's public-private medical training system. If private institutions can be held vicariously liable for physicians they neither employ nor control the incentive for private hospitals to participate in residency training programs will diminish, threatening physician workforce development and patient access throughout Ohio. For these reasons, the Ohio Hospital Association ("OHA"), the Ohio State Medical Association ("OSMA"), and the Academy of Medicine of Cleveland & Northern Ohio ("AMCNO") urge the Court to reverse the decision of the Sixth District Court of Appeals and grant the writ The Toledo Hospital ("Toledo Hospital") seeks.

The OHA is a private, non-profit trade association established in 1915 as the first state-level hospital association in the United States. For more than 100 years, the OHA has provided a mechanism for Ohio's hospitals to come together and advocate for health care legislation and policy in the best interest of hospitals and their communities. The OHA is comprised of 252 hospitals and 15 health systems. OHA's member hospitals directly employ more than 430,000 employees in Ohio.

The OSMA is a non-profit professional association established in 1835 and is comprised of physicians, medical residents, and medical students in the State of Ohio. The OSMA's membership includes most Ohio physicians engaged in the private practice of medicine. The OSMA's purposes are to improve public health through education, encourage interchange of ideas among members, and maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

The AMCNO, which was founded in 1824, is the region's professional medical association and the oldest professional association in Ohio. The AMCNO is a non-profit representing over

7,200 physicians and medical students from Northern Ohio. The mission of the AMCNO is to support physicians and medical students in being strong advocates for all patients and to promote the practice of the highest quality medicine. The AMCNO is proud to be the stewards of Cleveland's medical community of the past, present, and future.

Together, the OHA, the OSMA, and the AMCNO ("Amici Curiae") support reasonable accountability by state and private medical intuitions for injuries caused by alleged medical negligence. However, when those injuries stem from care provided by state employees, who are statutorily immune from liability, it is the State of Ohio, alone, that can be held responsible. Indeed, the private institutions that have agreed to support and supplement the training do not — and cannot — become *de facto* insurers for the State of Ohio.

Ultimately, this case concerns whether Ohio's public-private physician training system can continue to function as designed. Under the current framework, physicians who are employed by the residency programs sponsored by the State of Ohio — like University of Toledo College of Medicine and Life Sciences ("UTCM") — are permitted to train at nearby private hospitals – like Toledo Hospital. All parties, including Ohio's citizens, benefit from these arrangements. Physicians (and their employers) benefit through access to the private institution's support staff, experienced specialists, equipment, and breadth of clinical case work. The private institution reaps the benefit of additional providers, capable of serving Ohio's citizens seeking care – and particularly in instances of underserved communities. They avoid more costly hires or no physicians at all, especially in hard-to-recruit regions. And of course, Ohio's citizens benefit by having access to quality healthcare. Everybody wins.

State-sponsored residency programs in Ohio are common and important to the delivery of healthcare services. These programs train thousands of physicians every year.[1] Typically, these programs are parties to an agreement with one or more private institutions whereby their programs' employees — the resident physicians — are able to train at the private facilities. If private institutions and practices pull out of these arrangements, Ohio's citizens risk losing access to these resident physicians providing critical healthcare.

If this Court sanctions the judicial exercise of jurisdiction here, these partnerships will be threatened. More specifically, if a medical negligence plaintiff can sue the private hospital (at which the resident was training) in the Common Pleas Court and then sue the State (as the physician's employer) in the Court of Claims, the private hospital essentially becomes the insurer for the state medical institution — first by providing a defense and second by paying damages, if awarded.

This dual-suit-strategy opens other forbidden doors too, including the risk of double recovery, the risk of disparate outcomes, and of course — the most obvious — the forum shopping that is attendant to such a procedural quagmire. However, all of this pales in comparison to the inevitable chilling effect this will have on the future of private institutions providing their hospitals, resources, equipment, and staff to train Ohio's physicians.

Under Ohio's current statutory scheme, the Court of Claims has exclusive jurisdiction to resolve lawsuits against the State and its employees — here, UTCM and its employee, Dr. Sohaib Lateef. By attempting to sue Toledo Hospital (a private institution) as vicariously liable through

[1] *See* https://www.aamc.org/data-reports/students-residents/data/report-residents/2024/table-c6-physician-retention-state-residency-training-state (accessed August 20, 2026) (reflecting that in recent years Ohio has approximately 13,600- 14,000 active resident physicians and fellows training in graduate medical education across the state each academic year).

an agency by estoppel theory, Plaintiff in the underlying case (Shawn Diller), the Personal Representative of the Estate of Yvonne Diller (the "Estate"), seeks to circumvent the statutory scheme, and pursue a recovery from both the State of Ohio who ***is*** Dr. Lateef's employer, as well as Toledo Hospital, a private institution who categorically is ***not*** Dr. Lateef's employer.

Respondent (the trial judge, Judge Olender) should have refrained from exercising jurisdiction in the Estate's case. Respondent should have deferred to the Court of Claims, the sole body statutorily tasked with adjudicating claims against the State of Ohio and its employees and found the Estate's attempt ran afoul of Ohio law governing claims against state employees. Instead, Respondent elected to exercise jurisdiction, thereby undermining R.C. 2743.02.

## STATEMENT OF THE CASE AND FACTS

Amici Curiae adopt the Statement of the Case and Facts set forth in the merit brief of Appellant.

## LAW AND ARGUMENT

**Proposition of Law 1: The unintended consequences of the exercise of jurisdiction over a private institution for acts or omissions of a state-employee-physician frustrates the public policy advanced by this symbiotic training relationship, as well as the public policies embodied in R.C. 2743.02.**

### A. Public Policy is Served by a Writ of Prohibition

#### 1. Allowing a claim to proceed against a private institution based solely upon the acts of a state-employed physician would discourage private institutions from participating in medical education and residency training

Critical to Ohio's healthcare system is the collaboration between public and private institutions. State medical schools and teaching hospitals routinely partner with private hospitals, health systems, and private physician practices to provide educational opportunities, clinical training, and supervised patient care opportunities. These cooperative arrangements permit

medical residents and fellows to obtain the experience necessary to become licensed physicians while simultaneously expanding access to care throughout Ohio.

Though these relationships are mutually beneficial, they are founded upon a clear and distinct allocation of responsibilities (and liability) among the participating institutions. Private hospitals provide facilities, equipment, and clinical opportunities. However, state institutions carry the foundational responsibility to employ, train, supervise, and credential their resident physicians. Thus, the State of Ohio — and ***only*** the State of Ohio — remains the physician's employer (and subject to R.C. 2743.02).

The decision below threatens to upset this balance. Under the theory advanced by the Estate and ratified by Respondent, a private hospital may be subjected to liability for the acts of a physician whom it did not employ, did not pay, and did not control, merely because the physician provided care within the hospital's facilities. Such a rule effectively transfers liability away from the physician's ***actual*** employer (the State of Ohio) and onto a private institution that agreed only to participate in the physician's education and training. Nothing in Ohio's statutory framework suggests that private institutions assume that risk by opening their doors to state-employed residents.

Indeed, R.C. 2743.02 reflects the General Assembly's intent that when injuries are allegedly caused by state employees acting within the scope of state employment, the state bears responsibility for those acts and omissions. The statutory immunity scheme would be undermined if plaintiffs could simply recast claims against state-employed physicians as agency-by-estoppel claims against private hospitals whenever a resident physician happens to provide care within a private facility. Such a result would shift liability away from the entity that employs and controls the physician and onto an entity that has no comparable relationship with that physician.

The practical consequences are significant. Private hospitals voluntarily devote substantial resources to residency and fellowship programs sponsored by state institutions. They furnish facilities, equipment, nursing support, administrative staff, and clinical opportunities that permit state-employed physicians to complete their training. In order to do so, the private institutions must plan both operationally and economically to accommodate each resident. They dedicate beds, operating room, supervising physicians, personnel, and more based on the number of residents they expect to have providing care on premises. A rule that adds liability without the benefit of control over each physician and malpractice coverage naturally changes the economic and operational calculus of participation.

If participation in those programs exposes hospitals to potentially unlimited liability for physicians who are not their employees, private institutions will reassess the benefits and burdens of those arrangements. Fewer institutions will be willing to participate in training programs, and those that continue to do so may impose additional restrictions, costs, or limitations that ultimately reduce educational opportunities for future physicians.

The next domino to fall may well be access to healthcare for the public. As Ohio continues to face ongoing demands for qualified physicians throughout the state, particularly in underserved communities, the number of qualified state-employed residents serving those private institutions will greatly diminish.

Residency and clinical training partnerships are an essential component of developing and retaining the physician workforce necessary to meet those needs. The law should encourage the collaboration between public medical schools and private hospitals upon which Ohio's healthcare infrastructure depends. In reversing the decision by the Sixth District Court of Appeals, this Court could do just that.

### 2. Allowing plaintiffs to pursue separate litigation against private hospitals invites duplicative proceedings, inconsistent outcomes, and forum shopping

The rule advocated by the Estate, and adopted by Respondent, creates significant and unacceptable procedural problems and inequitable results. If a plaintiff can simultaneously pursue a vicarious liability claim against the state employer in the Court of Claims, and a derivative claim against a private hospital in the court of common pleas, any host of issues arise including duplicative recovery, disparate outcomes, unfair and unnecessary expenses, and prejudice to the institutions.

First, with simultaneous proceedings comes the risk presented here: that multiple courts have been asked to adjudicate the same alleged act of negligence arising from the same course of conduct. Two distinct courts will be asked to evaluate the same expert testimony, determine the same standard of care, and resolve the same causation issues. There is then the risk of inconsistent factual findings and/or results. One proceeding may result in a finding of liability, while the other, in absolution, will provide a plaintiff with two bites at the apple. Likewise, the opposite could occur — there could be two findings of liability, thereby allowing a plaintiff to pursue double recovery. This latter problem opens up a new issue — does such a result require set off?

Particularly problematic with this scheme is the fact that R.C. 2743.02 contains a mandatory sequencing requirement. Under this provision, a civil action against a state officer or employee alleging conduct manifestly outside the scope of employment, or alleging malicious purpose, bad faith, or wanton or reckless conduct, shall ***first*** be filed against the state in the Court of Claims, which has exclusive, original jurisdiction to determine, ***initially***, whether the officer or employee is entitled to personal immunity under R.C. 9.86 and whether the courts of common pleas have jurisdiction over the civil action. The result is a series of disjointed proceedings, temporary stays, and more.

Here, under the Sixth District's decision, the common pleas case against the non-employer-private-institution will be disposed of first. Then, the Court of Claims matter will proceed. If the state employee's conduct does not result in liability in the common pleas court proceeding, isn't the plaintiff getting a second bite at the apple if permitted to then proceed in the Court of Claims based on the same conduct? If the state employee's conduct does result in liability in the common pleas court, isn't the plaintiff seeking double recovery if then allowed to proceed in the Court of Claims?

Second, two distinct proceedings will substantially increase litigation costs for all parties and consume judicial resources that would otherwise be conserved through a single proceeding. Central to a medical negligence case is the need for (and cost of) expert witness testimony. Such a system invites inconsistent outcomes, and an unworkable procedural framework, demanding duplicative discovery, duplicative expert testimony (and the cost attendant to hiring them), and judicial inefficiency. Indeed, a case cannot proceed to disposition without an expert witness (and sometimes several), and parties routinely spend tens of thousands of dollars on qualified physician experts. Nothing in Ohio's statutory framework suggests that the General Assembly intended such inefficiency.

Third, permitting claims against state-employed physicians to proceed in multiple forums creates a strong incentive for forum shopping. To begin, the Court of Claims is a court of limited recovery. *See* R.C. 3345.40(B)(3). For instance, R.C. 2323.43(G)(1) expressly exempts Court of Claims medical malpractice actions from the general $250,000/$500,000 non-economic damages cap applicable to private medical malpractice defendants. Rather, the noneconomic damages cap in R.C. 3345.40 applies to state university-employed physicians. Under this provision, the plaintiff is limited to $250,000 in noneconomic damages. *See* R.C. 3345.40(B)(3). But the same exemption

does not apply if a plaintiff pursues a private employer in Ohio's common pleas courts. *See, generally,* R.C. 2323.43.[2]

A plaintiff dissatisfied with the limitations applicable in the Court of Claims could seek to obtain the same recovery indirectly by styling his allegations as an agency-by-estoppel claim against a private hospital. In practice, this approach permits plaintiffs to accomplish indirectly what they cannot accomplish otherwise — recovering from an entity with no employment relationship to the physician whose conduct forms the basis of the claim. Likewise, this rule offers plaintiffs an opportunity to test drive their case. They can trouble shoot themes and theories, witnesses, evidence, demonstratives and more to see what lands. Such prejudice should be avoided. In short, this strategic pleading undermines the carefully balanced statutory framework established by the General Assembly and creates uncertainty for healthcare providers across Ohio.

For these reasons, sound public policy favors a rule that aligns liability with actual employment and responsibility. Where a physician is employed exclusively by a state institution and is determined to have acted within the scope of state employment, claims arising from that physician's conduct should remain within the statutory framework established by R.C. 2743.02. Extending derivative liability to private hospitals that neither employed, nor controlled the physician threatens the stability of Ohio's medical training system, encourages duplicative litigation, and frustrates the legislative policy embodied in the Court of Claims statutory scheme.

[2] This, coupled with the fact that there is presently a split in authority among Ohio's judicial district about whether the damages caps set forth in R.C. 2323.43 are constitutional, amplifies the obvious – that medical negligence plaintiffs are incentivized to pursue their claims where the verdicts are the highest. *See, e.g.* Ohio Supreme Court Docket No. 2026-0131, *Thomas R. McNalley v. Vincent J. Keiser, M.D., et al.*

**Proposition of Law 2: The Common Pleas Court lacks jurisdiction over a medical negligence case against a private institution for vicarious liability stemming from the acts or omissions of a physician employed by the State of Ohio where the Court of Claims has already found the physician to be acting within the scope of his employment with the State.**

## A. The Court of Common Pleas Lacks Subject Matter Jurisdiction to Hear Claims for Vicarious Liability Against Private Institutions Premised on the Acts or Omissions of Immune State Employees

In enacting Ohio Revised Code R.C. 2743.02, the General Assembly intended that claims seeking recovery from the State of Ohio for acts and omissions by its officers and employees, be brought in the court of limited, but exclusive jurisdiction: the Court of Claims. This includes medical negligence claims asserted against physicians who are employees of state institutions, including, here, UTCM.

Toledo Hospital, on the other hand, is an entirely private institution that, by agreement, allows medical residents to train on its premises, utilizing its equipment, resources, and staff. However, Toledo Hospital does not employ any of these residents and disclaims any liability for their acts or omissions. Where, as here, there is a claim for medical negligence asserted against a resident physician employed by the state (who is statutorily immune from liability), the responsible institution is that physician's employer — UTCM.

Consequently, where there is a claim for medical negligence based on that state employee's conduct, R.C. 2743.02 places the lawsuit squarely under the jurisdiction of the Court of Claims. However, herein lies the problem: a medical negligence plaintiff likely does not want to be in the Court of Claims because recovery is limited. *See* R.C. 3345.40(B)(3). Not surprisingly, plaintiffs want to maximize their damages. That is why the Estate seeks to circumvent R.C. 2743.02 to get its lawsuit into the Common Pleas Court, despite that jurisdiction is lacking.

### 1. The Court of Claims has exclusive jurisdiction over all claims arising out of Dr. Lateef's alleged negligence

It is undisputed that Dr. Lateef is a state employee, and that his employer is UTCM. On these facts, the Court of Claims properly found that it had jurisdiction to hear a medical negligence claim arising out of his acts or omissions in the course of his employment with UTCM pursuant to R.C. 2743.02, and that Dr. Lateef was immune from liability under R.C. 9.86. *Diller v. University of Toledo College of Medicine and Life Science*, Ct. of Cl. No. 2024-00355JD. Likewise, the Court of Claims held that "Ohio courts of common pleas do not have jurisdiction over civil actions against Dr. Lateef arising out of his care and treatment of Yvonne Diller on May 11, 2023, at ProMedica Health System in Toledo, Ohio." *Id*. This finding should have been dispositive given the court's exclusive jurisdiction over civil actions against state employees. *State ex rel. Sanquily v. Ct. of Common Pleas of Lucas Cnty.,* 60 Ohio St. 3d 78, 79 (1991) (Finding that "R.C. 2743.02(F) patently and unambiguously takes [original jurisdiction] away from [common pleas courts] in a specific class of civil cases.")

The error is this: Respondent and the Sixth District both narrowly construed R.C. 2743.02 to mean that the Court of Claims' exclusive jurisdiction is premised merely on the identity of the party, when in fact, it is premised on the nature of the claim. *See* Decision, ¶ 17 ("R.C. 2743 . . . does not divest the common pleas court of jurisdiction over claims against Toledo Hospital.") However, R.C. 2743.02 is a statute concerning ***subject matter*** jurisdiction — not ***personal*** jurisdiction. R.C. 2743.02 provides:

> (2) If a claimant proves in the court of claims that an officer or employee…would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, ***the state shall be held liable in the court of claims in any action that is timely*** filed pursuant to section 2743.16 of the Revised Code and ***that is based upon the acts or omissions***. (Emphasis added.)

R.C. 2743.02(A)(2).

Only the State of Ohio — here, UTCM — can be liable "in any action . . . that is based upon the acts or omissions [of Dr. Lateef]." Where, as here, the claim is premised on the alleged negligence of a state employee who is employed ***only*** by the state and there are no other causes of actions asserted against the private institution (like, for instance, a negligent supervision claim), the claim is squarely and solely within the scope of the Court of Claims' jurisdiction. *Sanquily, supra.*

**2. Dr. Lateef's sole employer is UTCM, and only UTCM, may be vicariously liable for Dr. Lateef's acts or omissions**

It is undisputed that UTMC is Dr. Lateef's ***sole*** employer. He has no employment relationship with Toledo Hospital, nor is one alleged to have existed by the Estate, nor found to have existed by Respondent. Notwithstanding this critical distinguishing fact, Respondent found "the Court cannot say that Toledo Hospital was not a master of [Dr. Lateef]." (May 5, 2025 Opinion and Judgment Entry, pg. 9.) That finding is based, in part, on *State ex rel. Sawicki v. Lucas Cnty. Ct. of Common Pleas,* 2010-Ohio-3299. Meanwhile, the Sixth District abandoned *Sawicki* altogether, merely finding that Dr. Lateef's employment relationship with Toledo Hospital raises a question of liability, separate and distinct from the threshold question of subject matter jurisdiction. *Decision*, at ¶ 20. It concluded the merits of the Estate's claims should be decided in the first instance in the common pleas court. *Id*.

*Sawicki*, however, is a narrowly decided case and one inapplicable to these facts. In *Sawicki*, a plaintiff asserted a claim against a physician who was employed by ***both*** a private corporation and a state hospital. 2010-Ohio-3299. He sued the physician in the court of common pleas, naming only the physician and the private corporation ***not*** the state hospital. The trial court dismissed the physician on grounds that only the Court of Claims could determine whether the

physician was immune from liability, but that regardless, ***as his employer***, the private corporation could be responsible under the theory of respondeat superior. *Sawicki*, ¶ 5.

The Ohio Supreme Court agreed that the case could proceed against the private corporation. However, it is critical to its analysis was that the suit was the dual agency principle drawn from the Restatement (Second) of Agency § 226, which provides that a person may be the servant of two masters at one time as to one act, if the service to one does not involve abandonment of the service to the other. The Court reasoned that a single act may be done to affect the purposes of two independent employers, and a physician may simultaneously be the agent of both the state and a private employer. In other words, because the physician was ***also*** employed by the private hospital, the suit could proceed.

The dissent in *Sawicki* posits a critical issue. Justice Stratton observed that dual agency does not create liability for both employers, and that "[i]f the Court of Claims had determined that the doctor was acting within the scope of his state employment at the time, he would not be a dual agent." *Id*., at ¶ 42 (Stratton, J., dissenting). This observation is consistent with the comments to § 226 of the Restatement, which provide that "the control which a master can properly exercise over the conduct of the servant would prevent simultaneous service for two independent persons."

Ultimately, the instant case presents a distinct fact pattern from *Sawicki*: Dr. Lateef is ***not*** alleged to have been employed by Toledo Hospital whatsoever. Indeed, it is for this reason that the Estate falls back on the agency-by-estoppel theory. Herein lies the problem for the Estate — here, the Court of Claims ***did*** make the very finding that Justice Stratton pondered in her dissent. The Court of Claims found that Dr. Lateef ***was*** acting within the scope of his state employment. So, notwithstanding the fact that Toledo Hospital categorically does not employ Dr. Lateef, he could not be considered a dual agent given the finding of the Court of Claims.

For these reasons, the Court should reverse the decision of the Sixth District and grant the petition of Toledo Hospital for a writ prohibiting Respondent's exercise of jurisdiction in this case.

## CONCLUSION

For the reasons argued above, Amici Curiae, Ohio Hospital Association, the Ohio State Medical Association, and The Academy of Medicine of Cleveland & Northern Ohio respectfully urge the Court to reject the rule proposed by the Estate, and adopted by Respondent, and reverse the decision of the appellate court denying Toledo Hospital's Petition for Writ of Prohibition.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent via email transmission on August 20, 2026 to the following:

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