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## Fla. Justices Urged To Keep Hospital In Fatal 'Butt Lift' Case

By **Carolina Bolado**

Law360 (May 20, 2019, 4:29 PM EDT) -- The estate of a woman who died after a botched "butt lift" has told the Florida Supreme Court that letting a decision absolving a hospital of negligence claims stand would upend 37 years of precedent and force a rewrite of jury instructions used throughout the Sunshine State.

The estate of Suyima Torres, who died at Doctors Hospital in Coral Gables after she was rushed there following a botched surgery at a sham plastic surgery clinic, urged the Florida Supreme Court on Friday to hear its appeal of a Third District decision that said the hospital cannot be blamed for the alleged negligence of doctors who worked as independent contractors.

Torres' estate administrator Guillermo Tabraue III argued that the Third District's ruling directly conflicts with the Fourth District's 1982 decision in [Irving v. Doctors Hospital of Lake Worth Inc.](#), which said that a hospital providing emergency room services has a nondelegable duty to provide competent treatment, because a patient in an emergency generally has no control over who will be the treating physician.

Floridians in Fort Lauderdale and elsewhere in the Fourth District will now operate under one standard, while Floridians in Miami, in the Third District, will operate under another, and those living elsewhere won't know whether their negligence claims against a hospital can be dismissed because of the employment arrangement between the doctors and the hospital, according to Tabraue.

"Given that thousands of Floridians enter emergency departments daily either for themselves or a loved one, this court should accept jurisdiction, answer the question presented, and provide much needed clarity in Florida law," Tabraue said.

Tabraue called the Fourth District's Irving decision a "foundational, bedrock case" in Florida that has been incorporated into one of the Florida Supreme Court's standard jury instructions that are used in all 67 counties throughout the state. The decision was reaffirmed by the Fourth District just seven years ago, according to the brief.

"This court needs to make this choice so that Floridians are treated equally irrespective of where they live," Tabraue said.

Torres, 28, had received silicone injections in her buttocks from an unlicensed physician at an illegal clinic operated by a porn star, according to news reports, and suffered a medical emergency shortly after and was transported to the hospital via ambulance. The suit filed by Tabraue accuses the hospital's ER doctors of failing to timely diagnose Torres' blood clot and ignoring certain red flags appearing in blood test results, among other allegations.

The trial judge had ruled that the hospital can't be held liable, because Torres' father had signed consent forms recognizing that the ER doctors were independent contractors. In Florida, hospitals are generally not liable for the negligence of a medical provider who is an independent contractor.

On appeal, Tabraue argued that under state law, the hospital had a nondelegable duty to provide the patient with emergency care.

In March, the **Third District disagreed**, saying the law cited by Tabraue, Chapter 395 of the Florida Statutes, is a public health law that has to do with hospital licensing and operations rather than emergency room services.

The Third District read the Fourth District's case law as "creating, as a matter of law, an implied contract between hospitals and their emergency room patients." That public policy decision should be left for the Florida Legislature, not the courts, to address, according to the Third District.

Tabraue's attorney, Jorge Silva, told Law360 the Third District's decision has a "chilling effect on all of the residents and visitors of this great state."

"Additionally, it has a direct impact on how physicians will practice medicine and it leaves emergency medicine physicians, and others similar and situated, exposed to multimillion dollar judgments without the backing of a hospital who lured patients to their emergency departments," Silva said.

An attorney for Doctors Hospital could not be reached for comment Monday.

Tabraue is represented by Jorge E. Silva of Silva & Silva PA and Bryan S. Gowdy of Creed & Gowdy PA.

Doctors Hospital is represented by Jackson F. McCoy, Michael R. D'Lugo and Jessica L. Gross of Wicker Smith O'Hara McCoy & Ford PA.

The case is Tabraue v. Doctors Hospital Inc. et al., case number SC19-685, in the Supreme Court of Florida.

--Additional reporting by Y. Peter Kang. Editing by Nicole Bleier.

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