



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Fla. Hospital Cut From Suit Over ER Patient's 'Butt Lift' Death

By **Y. Peter Kang**

Law360 (March 27, 2019, 8:14 PM EDT) -- A Florida appellate panel on Wednesday upheld the dismissal of claims accusing a hospital of contributing to the death of a woman who underwent a botched "butt lift" at a sham plastic surgery clinic, saying the hospital can't be blamed for the alleged negligence of emergency room physicians who worked as independent contractors.

In a unanimous, precedential ruling, a three-judge Court of Appeal panel for the Third District affirmed a trial judge's decision to cut loose Doctors Hospital in a suit accusing it and emergency medicine physicians of failing to properly treat patient Suyima Torres, which contributed to her death the same day she was admitted.

The 28-year-old patient 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 estate administrator Guillermo Tabraue III 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.

The panel 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.

"We do not view the relied-upon statutes as imposing on hospitals a non-delegable duty to provide non-negligent emergency room care, and we are not inclined to infer one," the panel said in a 14-page opinion.

The appeals court cited the Second District's similar reasoning in a 2010 case, Tarpon Springs Hospital v. Reth, which held that Chapter 395 "regulates hospitals and addresses standards governing hospitals, not standards applicable to the practice of medicine."

The Third District panel acknowledged that the ruling in Tabraue's case and the Tarpon Springs decision conflict with the Fourth District's 2007 holding in Wax v. Tenet Health System Hospitals, which found a hospital on the hook for negligent anesthesia services performed by independent contractors, and certified the conflict for possible Florida Supreme Court review.

Tabraue had also argued that the hospital established a nondelegable duty to Torres based on an implied contractual relationship. Again the panel disagreed, finding that Florida law generally does not recognize such relationships between hospitals and patients over independent contractor negligence.

The appeals court again acknowledged that the Fourth District has made contrary rulings in a 1982 case called *Irving v. Doctors Hospital of Lake Worth* and in a 2012 decision in *Newbold-Ferguson v. Amisub*.

The opinion also did not discuss the status of claims against the ER physicians.

"We simply are averse to expanding, by judicial dictate, the liability of Florida hospitals, as the estate urges," the court said. "We certify conflict with *Irving v. Doctors Hospital of Lake Worth, Inc.* and *Newbold-Ferguson v. Amisub*."

Jorge Silva, an attorney for Tabraue, told Law360 they will lodge an appeal with the Florida Supreme Court.

"The chilling effect [of the ruling] is unbelievable," he said. "I genuinely believe the Third District, unlike the Fourth District which spelled it out clearly, just sadly failed to appreciate the consequences associated with the opinion. I'm confident the Supreme Court will understand not only the law but the consequences associated with its decision."

An attorney for the hospital did not immediately respond to a request for comment.

Judges Vance E. Salter, Ivan F. Fernandez and Edwin A. Scales III sat on the panel for the Third District.

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 III v. Doctors Hospital Inc. et al.*, case number 3D16-1661, in the Third District Court of Appeal of the State of Florida.

--Editing by Adam LoBelia.