

(L-R)Davie Managing Partner Diana Santa Maria of Law Offices of Diana Santa Maria and David M. Carter partner at Gould Cooksey Fennell in Vero Beach. Courtesy photos

NEWS

# These South Florida Lawyers Are Building a Case Against Cleveland Clinic Over Alleged Botched Surgery

“The court’s ruling, we believe, finds that the evidence presented reflects grossly negligent care and a complete disregard for Mr. Sasso’s safety by the physicians involved,” attorney Diana Santa Maria said.

May 16, 2022 at 03:17 PM

🕒 6 minute read

Medical Malpractice

[Jasmine Floyd](#) ➔

- The plaintiff is filing for Punitive Damages in a Wrongful Death Medical Malpractice case against Cleveland Clinic.
- The case involves a botched intubation of a 52-year-old man who walked into the hospital's emergency room the day before with a kidney infection.
- The team included four physicians, not one of whom was more than four years out of medical school.

Broward Judge Michelle Towbin Singer entered an order allowing Andrea S. Oriolo, who is the personal representative for deceased Saverio Sasso, to seek punitive damages in a wrongful- death medical malpractice case against Cleveland Clinic Florida Health System Nonprofit Corp.

The case involves an alleged botched intubation of a 52-year-old man who went to the hospital’s emergency room with a kidney infection. The procedure allegedly resulted in his anoxic brain injury and death, according to the complaint.

Plaintiff filed the motion in December after taking depositions of all the healthcare providers involved in his care.

Diana Santa Maria, managing partner of Law Offices of Diana Santa Maria in Davie, teamed with Gould Cooksey Fennell partners David M. Carter and Dane Ullian in Vero Beach, and Phil Parrish of Philip D. Parrish in Miami to represent the plaintiff.

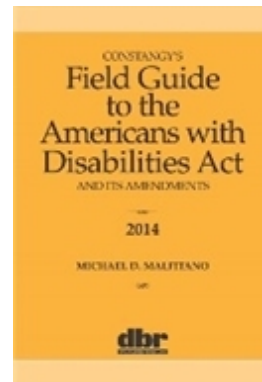
“It takes a lot of work and persistence to be able to get to this level,” Carter said. “When you’re talking about an entity or hospital and having to develop a claim for this ratification, essentially you’re having to get evidence of what was not done. And it’s not easy to determine.”

Santa Maria pointed out that the court ruled the plaintiff’s proffered evidence of gross negligence met or exceeded the heightened standard required by law to hold an entity liable for its agents’ gross negligence, allowing the recovery of punitive damages.

From procedural standpoint, plaintiffs aren't allowed to allege punitive damages in a complaint at the outset. They instead need to develop the evidence from discovery, and have enough information to present to the court to support a claim for punitive damages.

For Santa Maria and her team, the order suggests the court has found the evidence presented reflects grossly negligent care and disregard for Sasso's safety by the physicians involved.

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"Also, that the hospital's subsequent handling of the adverse event, including its failure to file a Code 15 report, ignores the law and deems the physicians' conduct to be acceptable," Santa Maria said.

A Code 15 is a report which must be filed within 15 calendar days of an adverse incident.

The attorneys representing the clinic—James De Church, Harry Cutler, June Hoffman and Marc Schleier—did not respond to requests for comment.

But the defendants filed a motion for limited stay pending review and motion for extension of time to respond to plaintiffs' fourth amended complaint. They argued the plaintiff failed to provide a reasonable evidentiary basis for the recovery of punitive damages, since the plaintiff's evidentiary proffer didn't establish that Sasso's healthcare providers engaged in conduct that accounted for his life.

**Read Defendants' Motion for Limited Stay Pending Review and Motion for Extension of Time to Respond to Plaintiffs Fourth Amended Complaint**

Defendants knowingly condoned, ratified, or consented to such conduct for purposes of Section 768.72(3)(b). In response, the Defendants argued that Plaintiff failed to provide a reasonable evidentiary basis for the recovery of punitive damages, because Plaintiff's evidentiary proffer did not establish that (1) Mr. Sasso's health care providers engaged in conduct that constituted a conscious disregard or indifference to Mr. Sasso's life, safety, or rights and that (2) any officer, director, or manager of either entity knowingly condoned, ratified, or consented to any statutory "gross negligence" on the part of Mr. Sasso's health care providers.

3. By Order dated April 21, 2022, a copy of which is attached hereto as Exhibit "A," this Court granted Plaintiff's Motion to Amend Complaint to Allege Punitive Damages.

4. With all due respect to this Court, the Defendants will be appealing this Court's Order to the Fourth District Court of Appeal. Effective April 1, 2022, Rule 9.130 of the Florida Rules of Appellate Procedure was amended to authorize appeals of nonfinal orders that grant or deny a motion for leave to amend to assert a claim for punitive damages. *See Fla. R. App. P. 9.130(a)(3)(G) (2022); In re Amendment to Florida Rule of Appellate Procedure 9.130*, No. SC21-129, 2022 WL 57943, at \*1 (Fla. Jan. 6, 2022).

5. The E : its discretion under  
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Rule 9.310 of the Flor rial court proceedings

Sasso was admitted to the hospital on the order of Dr. F. Scott Ross, the hospital's chief medical officer, the complaint states.

Ross allegedly never examined Sasso, but ordered him to a unit that offered less monitoring than had been recommended by the emergency room physician, according to details in the order granting the motion to allege punitive damages.

Five hours after Sasso's admission, when Ross' day shift had ended, Sasso was first seen by a hospitalist, Dr. Herman Katz, according to court documents. Katz would never see Sasso again.

Later that evening Sasso was cared for by a nurse with less than 90 days' experience, according to details in the order granting motion. In the early morning hours of Sept. 24, 2018, Sasso was decompensating, and a rapid-response team was called.

The team included four physicians, not one of whom was more than four years out of medical school, according to the plaintiff. At some point, the rapid response team allegedly recommended an elective intubation to protect Sasso's airway, according to the plaintiff.

While this was happening, allegedly neither Katz, nor an emergency-room physician or critical care nurse was present, even though the presence of each of these caregivers was required under the hospital's Code-Blue policy.

### Order granting motion to allege punitive damages

Filing # 148172208 E-Filed 04/21/2022 06:29:11 PM

**CACE19026017 04-21-2022 11:18 AM 21st day of April, 2022**

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

ANDREA S. ORIOLO, as Personal  
Representative for the Estate of  
SAVERIO SASSO, deceased,

CASE NO. CACE-19-026017  
DIVISION: 21

Plaintiff,

v.

CLEVELAND CLINIC FLORIDA  
HEALTH SYSTEM NONPROFIT  
CORPORATION, a Florida Not for  
Profit Corporation, and CLEVELAND  
CLINIC FLORIDA (A NONPROFIT  
CORPORATION), a Florida Not for  
Profit Corporation,

Defendants.

According to details in the order granting the motion, Dr. Justin Dolan who was a senior physician, administered the paralytic agent, succinylcholine, and authorized the junior physician in the room, an intern named Dr. Miquel Gonzalez, to attempt to intubate Sasso.

Gonzalez's attempts allegedly failed, and Sasso laid in the hospital bed unable to breathe due to induced paralysis, the plaintiff claimed. Next, Dolan attempted but failed to intubate Sasso, according to the plaintiff.

Neither Dolan nor Gonzalez was permitted to intubate a patient without direct supervision of an emergency room physician or an anesthesiologist, neither of whom were present when Dolan and Gonzalez began their intubation attempts, the plaintiff alleged.

Once emergency room physician Dr. Ian Russinoff arrived after these failed attempts, he was also unsuccessful with intubating Sasso, the plaintiff alleged.

After an anesthesiologist was paged, Sasso was successfully intubated. But by the time Sasso's airway was re-established, he had already experienced a prolonged period of anoxia resulting in a global anoxic brain injury, the order granting the motion stated.

The Hospital had notice of the adverse incident, as Ross acknowledged the iatrogenic harm in a conversation with Sasso's fiancé at the end of his life.

In violation of hospital policy, cardiac rhythm strips were not allegedly preserved, and Dolan's care was allegedly never noted in Sasso's medical record. Under section 395.0197(7) which is a Internal risk management program, the hospital never reported Sasso's incident to the Agency for Healthcare Administration, the plaintiff claimed.

The hospital's internal "root-cause analysis" was conducted without input from many of the caregivers involved in the failed intubation, and the resulting report made no reference to the violations of the Code Blue policy, the plaintiff alleged.

The hospital also never overreviewed Sasso's incident through any re-training, policy changes, or discipline, the plaintiff claimed. It also declined to use Sasso's incident as a teaching opportunity for the interns, residents and fellows whom the Hospital undertook to train, according to the plaintiff.

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