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Jury awards \$4.7M for death at hospital

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A Cook County jury has awarded \$4.7 million to the family of a woman who died at a suburban hospital after she suffered a severe asthma attack.

Georgia Tagalos, 49, of Seymour, Ind., became brain dead in July 2006 at the hospital now known as Franciscan St. James Health — Olympia Fields.

On July 9, 2006, Tagalos was a passenger in a car driven by her son, Ted Fragogiannis, on Interstate 57 near Matteson. At that time, she had an asthma attack.

Her son called the Matteson Fire Department, which dispatched an ambulance that transported Tagalos to St. James Hospital.

By the time she arrived at the hospital, Tagalos was grasping her throat and unable to speak.

It took at least seven minutes for her to be seen by an emergency room doctor, according to evidence at the trial. Tagalos started to lose consciousness because she couldn't breathe.

Dr. Julie Mills, a resident physician in training, was the first doctor to evaluate Tagalos. Dr. Perry Marshall, the attending physician in the hospital's emergency department, told Mills to intubate her.

Both Marshall and Mills are doctors of osteopathic medicine.

Mills failed in her initial attempt to intubate Tagalos. A second attempt at intubation also failed.

At that point, the doctors called for assistance. An anesthesiologist arrived and tried to intubate Tagalos.

A total of six unsuccessful attempts were made to intubate. At that point, her oxygen saturation levels fell to 49 percent.

Another doctor then performed a surgical procedure to create an emergency breathing passage in order to provide oxygen to Tagalos.

But Tagalos suffered a brain death because of a lack of oxygen.

On July 12, 2006, Tagalos was removed from life support at the hospital and died.

Tagalos' son sued both doctors and the hospital in Cook County Circuit Court in 2008, alleging wrongful death and seeking compensation for the pain and suffering Tagalos experienced before her death.

Lawyers for Tagalos' family asserted the hospital was liable for its apparent agents — Marshall and Mills.

After a weeklong trial presided over by Circuit Judge Lorna E. Propes, the jury returned a verdict on Nov. 25 finding Marshall and St. James Hospital liable.



Mark R. McKenna

The jury did not find Mills liable.

"I think the jury's verdict against Dr. Marshall and the hospital and not against Dr. Mills shows that the jury was disturbed by the lack of leadership by the attending emergency room physician during this medical emergency," said Mark R. McKenna, a partner at Hurley, McKenna & Mertz P.C., who represented the Tagalos estate along with his partner, Christopher T. Hurley.

"For the family, this is a loss they still feel every day and the jury's verdict recognizes the severity of the family's loss," McKenna said.

Tagalos is also survived by her husband, Frank.

Dina L. Torrisi, a partner at HeplerBroom LLC, represented the hospital and Mills. Torrisi said she is pleased the jury found Mills not liable.

Defense attorneys asserted at trial that Tagalos' death was caused by her severe asthma attack, which was untreatable.

The hospital plans to file a post-trial motion in the case related to the apparent agency issue.

The hospital uses a consent form which notifies its patients that it does not employ the doctors. Lawyers for Tagalos' estate filed a motion in limine to bar admissibility of the consent form, which Propes granted over the defendants' objections, Torrisi said.

"We raised this issue at various points during the trial that the consent form should be admissible because that form could have been used to refute the claim of apparent agency," Torrisi said. "But the judge stood by her original ruling."

Robert P. Vogt, a partner at Weldon-Linne & Vogt, represented Marshall. Vogt said he and Marshall are exploring options for post-trial relief, which could include an appeal to the 1st District Appellate Court.

The case is *Ted Fragogiannis, et al. v. Sisters of St. Francis Health Services Inc., et al.*, No. 08 L 5238.