

Flawed Medical Malpractice Legislation Can Have Deadly Consequences

— A current lawsuit in Florida offers an alarming case study

by Aron Solomon, JD March 1, 2024



Solomon is a legal analyst and legal editor.

"It becomes your worst nightmare."

Those were the words of Stephanie Liskowitz, the wife of John Liskowitz, who died last March. John, who divided his time between New Jersey and Florida, had a medical procedure in Florida and never made it home.

Stephanie and Ashley Liskowitz, the daughter of John and Stephanie, [filed a lawsuit](#) recently, on what would have been John's 59th birthday, in the Hillsborough County, Florida court. The suit names as defendants: Gary Clayman, MD; Norman Clayman Endocrine Institute, LLC; Dung-Anh Ung,

MD; and PM West Florida Division. All parties have admitted liability of the allegations during the pre-suit period, according to Tim Groves, JD, the lawyer representing the Liskowitz family.

The suit alleges that the defendants were negligent and caused the wrongful death of John, and that Clayman falsely represented his experience and litigation history. Yet, the facts alleged in the lawsuit's complaint go far beyond that, revealing the scope of the nightmare this must have been for John, and must remain to this day for his family.

According to the complaint, John underwent surgery for thyroidectomy on March 1, 2023. On March 2, after the successful removal of the thyroid, swelling was noticed in his throat at 3:50 a.m. At 4:06 a.m., a rapid response was called for swelling at the incision site. Clayman was notified and informed the staff to contact the on-call surgeon Nate Walsh, MD. Walsh was called three times and did not respond.

Due to the lack of response, Clayman was contacted and arrived at John's bedside at 5:17 a.m. From 3:50 a.m. to 5:35 a.m. -- 1 hour and 45 minutes -- there was no attempt to protect John's airway or decompress the hematoma. At 5:35 a.m., John was taken to the operating room for removal of the hematoma. There were two unsuccessful attempts to intubate. In the first attempt, the tube was improperly placed down John's esophagus instead of his windpipe. A second attempt to establish an airway was also unsuccessful. Finally, in the third attempt to access John's airway, he was successfully trached and ventilated.

The anesthesia records referenced in the complaint indicate that John had no respiration at 5:30 a.m. and 5:45 a.m. His O₂ saturation at 5:30 a.m. was 5. His O₂ saturation at 5:45 a.m.

was below the threshold of the pulse oximeter. By the time the hematoma was successfully removed, John had suffered irreversible brain injury.

John Liskowitz died on March 11, 2023.

Who Is Liable?

A [Florida statute](#), Fls. 766.207, "Voluntary Binding Arbitration of Medical Negligence Claims," creates a loophole that arguably absolves medical professionals who commit malpractice.

That's an admittedly harsh statement. Let's unpack why it's provocative but accurate in specific cases.

Essentially, Fls. 766.207 is a massive Florida loophole that caps medical malpractice liability. When a doctor admits liability, as they did in the Liskowitz case, you can't go after pain and suffering damages beyond the low cap of \$250,000 (section 7b).

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More importantly, the limited settlement is moved to arbitration where it is resolved under a cloak of secrecy. The alleged malpractice, negligence, and tragedy are swept under the rug for pennies on the dollar. By admitting liability, the doctors who committed medical malpractice don't have to

go to court and stand in front of a jury that might have awarded the patient millions; and notably, the outcomes of the suit will not be made public.

This reveals what is, pure and simple, a truly abhorrent legal design flaw. A system that is supposed to be designed to help people get justice is helping the medical wrongdoers by shielding them from financial accountability simply by their admittance of liability. On top of that, it makes it more challenging for the public -- prospective patients -- to learn of these healthcare professionals' poor record of providing safe and high-quality care.

So how can Florida fix the design flaw? Because if they don't, patients could wind up seeking care from a physician who they believe has a stellar record, but in reality has a history of malpractice.

Groves, the family's attorney, emphasized to me when we discussed the case, "In Florida, the admission by negligent parties often restricts access to information and shrouds the truth in greater secrecy. The facts of this case, including the defendant's alleged misrepresentation, warrant public scrutiny in our courts, which are designed to provide such transparency to the public."

The Liskowitz family is pursuing claims of misrepresentation of facts against Clayman and the Hospital for Endocrine Surgery. Clayman was recommended by John's endocrinologist William Kaye, MD. Following the recommendation, John thoroughly researched the Hospital for Endocrine Surgery and Clayman, who allegedly declared on his website that he was "one of the most experienced thyroid surgeons and arguably the most experienced thyroid cancer surgeon in the world," adding the assurance we all look for that, "Dr. Clayman has never had a claim of malpractice concerning his operative care in his entire career." The website continues to make [almost identical claims](#).

The complaint alleges that those representations are false. The Liskowitz family has also filed a complaint with the Board of Medical Examiners, according to Groves.

Although located in Tampa, Florida, the [Clayman Thyroid Center](#) at the Hospital for Endocrine Surgery says it is a destination for thyroid surgery for patients who come from across the nation and from foreign countries for treatment.

This is a fight that the Liskowitz family is prepared to stick with as far and as long as they need to. As Stephanie Liskowitz said to me, "We will not rest while we pursue full transparency around what happened to John and the claims around Dr. Clayman's competency. We are committed to ensuring that what happened to my husband and our family does not happen to any family ever again. There needs to be transparency around healthcare performance and advertised claims of performance need to be better regulated so that patients and the public can make informed decisions and appropriate choices when selecting their healthcare provider."

So where do we go from here? How many patients need to make what they reasonably believe to be educated, informed decisions about their medical care only to wind up with a doctor whose history they had no viable way of knowing? In a state like Florida, only time will tell.

Aron Solomon, JD, is the chief strategy officer for [Amplify](#), a legal marketing and media agency. He has taught entrepreneurship at McGill University and the University of Pennsylvania, and was elected to Fastcase 50, recognizing the top 50 legal innovators in the world. Solomon is a Pulitzer Prize-nominated writer.

Disclosures

Amplify does legal marketing for Domnick Cunningham & Yaffa, the law firm representing the Liskowitz family.

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