[COURT EYES MEDICAL MALPRACTICE ‘CRISIS’](https://newsserviceflorida.com/app/post.cfm?postID=34384)

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TALLAHASSEE --- In a case stemming from a woman’s lung-cancer death, an appeals court Friday urged the Florida Supreme Court to look again at whether the state has a medical-malpractice insurance “crisis” that justifies limiting damages in certain lawsuits.

The move by a panel of the 2nd District Court of Appeal came in a Lee County lawsuit challenging the constitutionality of a state law that prevented the adult children of Ramona Reyes from recovering non-economic damages --- commonly known as pain and suffering damages --- in her death.

The law bars adult children from recovering non-economic damages for wrongful death in medical-malpractice cases, though adult children are able to seek such damages for wrongful death in other types of lawsuits. That legal difference led attorneys for Reyes’ adult children, Sandra Santiago and Norma Caceres, to argue that the medical-malpractice law violates constitutional equal-protection rights.

The appeals court Friday upheld a circuit judge’s decision to dismiss the Reyes lawsuit, pointing to a 2000 Florida Supreme Court decision in a medical-malpractice case. That 2000 decision cited arguments by the Legislature that barring adult children from recovering non-economic damages was needed because of a medical-malpractice “crisis” that involved skyrocketing insurance costs for doctors and other health providers.

But the appeals court urged the Supreme Court to revisit the issue --- a move known as certifying a “question of great public importance” --- because of 2014 and 2017 Supreme Court rulings that questioned the existence of a medical-malpractice crisis. Those rulings rejected other damage limits in malpractice cases.

The appeals court wrote that “in light” of the 2014 and 2017 decisions, it wants the Supreme Court to decide whether the wrongful-death damages ban violates equal-protection rights. The panel said “Santiago and Caceres contend these later declarations that there is no evidence of an ongoing medical malpractice crisis must undermine” the Supreme Court’s 2000 rationale for upholding the law in a case known as Mizrahi v. North Miami Medical Center.

Nevertheless, the [appeals court ruled](https://www.2dca.org/content/download/539386/6088033/file/183114_65_10182019_08552050_i.pdf) against Santiago and Caceres because it said it was bound by the 2000 precedent on the issue. Santiago and Caceres filed the lawsuit against physician Francisco Rodriguez alleging negligence in the 2017 death of their mother from lung cancer.

“(We) are bound to follow Mizrahi even if the Supreme Court's subsequent decisions in related cases suggest that it might decide the case differently if it were to address the issue today,” said Friday’s eight-page ruling, written by appeals-court Judge Stevan Northcutt and joined by judges Anthony Black and Matthew Lucas. “When a district court believes that a Supreme Court case has been incorrectly decided or should be reevaluated, the court cannot simply deviate from the Supreme Court's decision. Rather, the proper procedure is to follow the precedential case and certify a question of great public importance that presents the district court's concerns.”

A twist to the issue, however, is that the Supreme Court has undergone major changes since the 2014 and 2017 rulings, with Gov. Ron DeSantis this year appointing justices Barbara Lagoa, Robert Luck and Carlos Muniz to replace longtime justices Barbara Pariente, R. Fred Lewis and Peggy Quince, who reached a mandatory retirement age.

Pariente, Lewis and Quince were part of a liberal bloc on the court and were in the majorities in the 2014 and 2017 cases rejecting medical-malpractice caps. DeSantis’ picks of Lagoa, Luck and Muniz made the court far more conservative.