

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **MEDICAL MALPRACTICE - NEW YORK**

### **Flores-Vasquez v. New York City Health & Hospitals Corp.**

**Supreme Court, Appellate Division, First Department, New York - December 24, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 08543**

Patients brought action against city hospital, seeking to recover for alleged medical malpractice. The Supreme Court, Bronx County granted patients' motion for leave to file a late notice of claim. City appealed.

The Supreme Court, Appellate Division, held that trial court was within its discretion in granting patients leave to file late notice of claim.

In determining if leave to file a late notice of claim should be granted, the court must consider whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in its defense.

Trial court was within its discretion in granting patients leave to file late notice of medical malpractice claim against city hospital. Although patients failed to proffer a reasonable excuse for the delay, patients submitted expert affidavits showing that city had actual knowledge of facts underlying their theory of a departure from accepted standard of pediatric care with regard to diagnosis and treatment of infant patient's fetal distress and existence of a causally related injury, and their opinions were not refuted by city's pediatric defense expert.