

## **DIVISION TWO ADDRESSES ACCRUAL, EQUITABLE ESTOPPEL FOR NOTICE OF CLAIM PURPOSES**

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*Little v. State of Arizona*

Ct. Appeals, Div. Two, September 30, 2010

Authored by the [JSH Appellate Team](#)

Plaintiff Little sued the state for the wrongful death of her daughter, Shawntinice Polk, a star player on the University of Arizona women's basketball team. Polk died after collapsing in a training room on September 26, 2005. The cause of her death was a pulmonary thromboembolism. A local television reporter approached Plaintiff about making a documentary about Polk's death. Little authorized the reporter to obtain her daughter's medical records and investigate the circumstances surrounding her death. On July 1, 2007, the reporter filed a complaint on Plaintiff's behalf with the Arizona Medical Board against Polk's treating physician. On February 7, 2008, the board ruled that the physician's treatment of Polk fell below the standard of care. Polk's treating physician was an employee of the state at the U of A's Campus Health Services. Plaintiff Little filed a notice of claim with the state on May 15, 2008.

The State moved for summary judgment based on Plaintiff's failure to file the notice of claim within the 180 day statutory time limit. The trial court granted the State's motion and the Plaintiff appealed, arguing that her notice of claim was timely because her cause of action did not accrue until the Board issued its decision finding negligence. Alternatively, Plaintiff argued that any untimeliness should be excused under the doctrines of equitable estoppel and tolling.

The court of appeals affirmed, ruling that Plaintiff's cause of action accrued when the reporter filed a complaint with the board on Little's behalf, because she was then on notice to investigate whether negligent conduct may have caused her injury. The reporter who filed the complaint on Plaintiff's behalf acted as her agent, and therefore Plaintiff effectively filed the board complaint herself. The court rejected Plaintiff's argument that equitable estoppel or equitable tolling applied. Plaintiff's claims regarding equitable estoppel were speculative, and she did not demonstrate the extraordinary circumstances warranting the application of equitable tolling.