

WHERE MULTIPLE ACTORS CONTRIBUTE TO INJURY, PLAINTIFF MUST PROVE ONLY THAT EACH DEFENDANT'S CONDUCT INCREASED THE RISK AND WAS A SUBSTANTIAL CONTRIBUTING FACTOR

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Carol Salica v. Tucson Heart Hospital.
Ct. Appeals, Division Two, May 27, 2010

Authored by the [JSH Appellate Team](#)

Plaintiff filed a wrongful death action arising from the death of her husband Louis Salica against Tucson Heart Hospital and others. The jury found Tucson Heart sixty percent responsible due to its nurse's failure to notify a physician of Salica's deteriorating medical condition. The jury attributed 40% fault to the cardiologist. Tucson Heart appealed and argued insufficient evidence that the nurse's negligence caused Salica's death.

Tucson Heart did not dispute its nurse's failure to alert a physician, but argued that the evidence of proximate cause was deficient – that Plaintiff had to prove the injury would not have occurred “but for” the nurse's act or omission, and she did not offer specific proof that the nurse's failure was a “necessary condition for the occurrence of the injury.” The court held this was not the applicable standard when multiple tortfeasors are alleged to have created an indivisible injury and each defendant's causal role is potentially indeterminable. In such cases, the “substantial factor” test applies. Under this test it was sufficient for the jury to find the nurse's conduct was a substantial factor in Salica's death because an expert testified the nurse's conduct “meaningfully decreased Salica's chance of survival.” The but-for test for causation is not strictly applicable when causation cannot be determined between two defendants who may have created one injury. In medical malpractice cases where multiple actors contribute to an injury, a plaintiff is required to prove only that each defendant's conduct was a “substantial factor” in causing the injury and “contributed to the final result.” At that point “the burden of proof on apportionment is on them.”