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From the April 27, 1998 North Carolina Lawyers Weekly.

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Verdicts & Settlements

Medical Malpractice

**Wrongful Death -- 62-Year-Old Man -- Previous Heart Attack --
Went To ER With Chest Pains -- Exclusive Treatment By
Physician's Assistant -- Diagnosed Gastritis And Discharged --
Death On Way Home -- \$1.025 Mediated Settlement -- ER
Policies Changed**

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Brief Statement of Claim: The family of a 62-year-old man filed a wrongful death suit after he was discharged from an emergency room without seeing a doctor for his chest pains. A physician's assistant diagnosed gastritis and sent him home. He died on the way of a cardiac arrhythmia.

Principal Injuries (in order of severity): Death

Special Damages: Loss of services provided by the decedent to his wife

estimated at \$207,254.

Tried or settled: Settled after two mediations

County where tried or settled: Robeson

Case Name and number: *Nancy M. Locklear, Administratrix of the Estate of Luther Locklear Jr. v. Eddy Wayne Akers, P.A.; Eliot Anthony Atstupenas, M.D.; Southeastern Regional Medical Center; and Emergency Physician Associates, Inc., formerly known as Emergency Physician Associates, P.A.* (Robeson County Superior Court; No. 97 CvS 00117).

Date Concluded: The first mediation with all defendants was conducted on Aug. 27, 1997. During this mediation, Nancy Locklear authorized her attorneys to require the hospital to establish proper guidelines for supervision of physician assistants in the ER as a prerequisite to any monetary settlement. During this mediation, the hospital assured her that such a policy would be implemented. Settlement negotiations proceeded, but the case was not resolved.

In November 1997, the plaintiff settled with Eliot Anthony Atstupenas and Emergency Physician Associates.

During the second mediation on Feb. 4, 1998, the plaintiff settled with Eddy Wayne Akers, P.A. and Southeastern Regional Medical Center.

Name of mediator: Robert Beason

Amount: Total settlement of \$1.025 million – Atstupenas (\$80,000); Emergency Physician Associates (\$70,000); Akers and Southeastern Regional (\$875,000)

Insurance Carrier: Atstupenas (Medical Protective Company); Emergency Physician Associates (Princeton Insurance Company); Akers and Southeastern Regional (PHICO)

Attorneys for plaintiffs: Karen Rabenau and Don Strickland of Twiggs, Abrams, Strickland & Trehy, P.A., Raleigh

Other Useful Info: The decedent was a patient in the ER at Southeastern Regional in Lumberton on Jan. 25, 1995. Approximately six months previously, he had been diagnosed at the same ER with a myocardial infection and was flown to Duke, where he successfully underwent cardiac catheterization.

During the Jan. 25 visit, he was evaluated and treated exclusively by a physician's assistant, Eddy Akers, who was an employee of the hospital. Dr. Atstupenas was the attending physician in the ER by virtue of a contract between the hospital and Emergency Physician Associate to provide medical care through medical attendings in the ER.

The decedent had to wait two hours before he was brought to an examining room. Four hours later he was first seen by Akers.

Despite the decedent's complaints of pressure-like chest pain, shortness of breath, and weakness, the PA spent only seven minutes evaluating him and never made Dr. Atstupenas aware of the decedent's presence in the ER. Without consulting a physician, Akers diagnosed the decedent with gastritis and discharged him with Zantac and instructions to buy Gas-X.

The decedent died of cardiac arrhythmia on the way home from the ER. Dr. Atstupenas later signed off on his chart as the attending physician.

At the time of the decedent's death, it was the policy at Southeastern Regional that patients presenting to the ER could be seen by either a physician or a PA, regardless of their presenting symptoms. At that time, it was up to the PA seeing a patient to determine when he or she should consult with the attending ER doctor.

Among other things, the plaintiff alleged:

- That unstable angina should have been high on the PA's list of differential diagnoses.
- That the decedent should have been placed on a cardiac monitoring device and undergone a cardiac panel to check his cardiac enzymes, which would have revealed damage to the heart muscle.
- That the decedent should have been admitted for observation and given anti-thrombotic therapy to re-establish perfusion in his occluding coronary vessels.

Based on his history and autopsy findings, the decedent's right coronary artery was probably re-stenosing or re-occluding, as do some 30 percent of patients in the six months following an angioplasty, and he most likely died from ischemia-induced fatal cardiac arrhythmia.

According to the plaintiff's experts, had the decedent been properly treated, he would most likely have undergone a repeat angioplasty and had a very good prognosis.

From an institutional perspective, the plaintiff alleged that patients who has a history of cardiac problems and present with chest pain should not have a PA as their primary provider. Locklear should have been brought to an examination room and, even by Southeastern's own standards,

evaluated within one hour, according to the plaintiff.

According to the plaintiff's counsel, the most troubling problem with the decedent's care was that the attending physician, Dr. Atstupenas, was never made aware of Locklear's presence in the emergency room. It was accepted policy at Southeastern that PAs could act autonomously in the ER and discharge patients without consulting with a physician, regardless of their symptoms.

North Carolina physician assistant licensing regulations deem the PA to be the agent of the attending physician. The plaintiff argued that if Dr. Atstupenas did not agree with Southeastern's PA supervision, he should have established his own guidelines with his agents or made an effort to change the system.

The plaintiff also alleged that Emergency Physician Associates, the group contracting to provide medical attendings to staff the ER, should have made efforts to change the PA policy.

As a result of this case, a policy has now been developed at Southeastern Regional which mandates consultation between the PA and MD and ensures that patients with certain presenting symptoms will be seen by a physician prior to discharge from the ER.

Those symptoms include:

- Chest pain typical of ischemic or cardiac pain.
- Any chest pain accompanied by shortness of breath, syncope, dysrhythmia, associated risk factors, or for which the etiology is not clear.

The hospital also increased its ER staffing to include two physicians at peak times, rather than one doctor and a PA.

American College of Emergency Physician Guidelines, which were published shortly after Locklear's death, state that PAs are to supplement but not replace the physician in the clinical setting, that the physician assumes ultimate responsibility for the patient, and that the PA's scope of practice must be clearly defined.

Luther Locklear was retired from his job with the city of Lumberton, and survived by Nancy, his wife of 18 years.

After retiring, he took on the responsibility for most of the cooking, cleaning, home maintenance and yard work. He also raised chickens and planted a garden.

He and his wife enjoyed fishing together and spent their Sundays traveling to many churches in the southeastern part of the state, where Luther was a guest minister and taught Sunday school.

Following her husband's death, Nancy relocated to Maryland to live with her children from a prior marriage.

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