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Front Page Story

Case Reports: ER Settlement Hinged On Use Of Physician Assistant

By Ertel Berry, Legal Editor

A Robeson County hospital has paid \$1 million to the widow of a heart patient who was sent home from the emergency room without ever seeing a doctor.

The case spotlights the growing use -- some would say overuse -- of physician's assistants in today's emergency medical care.

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The decedent, a 62-year-old man, had already undergone an angioplasty after a previous trip to Southeastern Regional Hospital in Lumberton. Six months later, he went back to the ER, complaining of chest pains.

After a six-hour wait, a physician's assistant diagnosed gastritis, gave him some Zantac and sent him home. He died of a heart arrhythmia as he headed home.

Changing the policy that led to the misdiagnosis was a precondition to the mediated settlement, according to Raleigh attorney Don Strickland, a lawyer for the plaintiff.

"From the first, our client told them not to talk about money unless they would also talk about changing the policy that physician's assistants could see any patient and discharge them without seeing a doctor," Strickland said. "This man was re-stenosing, as happens 30 percent of the time, but the physician's assistant didn't recognize it."

According to Strickland, the most troubling problem was that the attending physician never knew that the decedent was in the emergency room. Under hospital policy, PAs could act autonomously and discharge patients without consulting with a physician, regardless of their symptoms.

"There is a North Carolina regulation that says physician's assistants must practice under the supervision of a physician, but it doesn't say per se that the doctor has to be present," said another attorney for the plaintiff, Karen Rabineau of Raleigh.

As a result of this case, Southeastern now mandates consultation between the PA and doctors to ensure that ER patients with certain symptoms are seen by a physician.

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

"All we've done is bring this hospital into line with the proper standard of care," said Rabineau. "Given the rising costs of medical care, the use of physician's assistants has increased. They certainly have their place in medicine, but there was just too much autonomy.

"In some cases, it may be appropriate to fast track and let the PA be the primary person," Rabineau said. "But with more subtle types of complaints, like chest pains, doctors have got to go on their gut instincts. You need the expanded experience of a physician."

The case is *Nancy M. Locklear, Administratrix of the Estate of Luther Locklear v. Akers, P.A. et al* (Robeson County Superior Court; No. 97 CvS 00117).

Facts

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 infarction 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 Associates.

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. Without consulting a physician, Akers diagnosed the decedent with gastritis and discharged him with Zantac and instructions to buy Gas-X.

He 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 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. It was up to the PA 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.

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.

American College of Emergency Physician Guidelines, which were published shortly after the decedent'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.

In addition, 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 should have made efforts to change the PA policy.

During the first of two mediations, the decedent's widow authorized Strickland and Rabineau to require the hospital's establishment of new PA guidelines as a prerequisite to any settlement.

The hospital agreed to that demand and the case settled during a second round of mediation.

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