

Appellate Watch

Suit Faults Surgeon's Delegation of Emergency Procedure to Generalist

By Michael Booth

A case at the state Supreme Court questions whether a hospital cardiologist improperly delegated an emergency procedure to a general physician without the patient's family's consent.

So far, in *Liguori v. Elmann*, A-52-06, lower courts have found no breach in acceptable standards of care, but the daughter of a woman who died after heart surgery insists there was malpractice.

On Dec. 9, 1999, Geraldine Liguori, 71, underwent a quadruple cardiac bypass operation at Hackensack University Medical Center. The initial operation was successful but several hours later one of her lungs collapsed. The cardiologist, Elie Elmann, was in the middle of another operation. In his stead, Dr. James Hunter, an uncertified cardiologist who had assisted in Liguori's surgery, inserted a chest tube to help inflate the lung. She did not respond to the treatment and died.

Liguori's daughter, Patricia, charges that had the family known Hunter was not board-certified, they would have demanded that a more qualified physician perform the procedure.

"My client expected ... the defendants to take care of any complications," her lawyer, Adam Slater of Roseland's

Mazie Slater Katz & Freeman, told the Court. "This was absolutely, clearly a surgical procedure; you don't send in a general practitioner."

Slater also argued an unannounced change in Hunter's defense expert's testimony required reversal of the verdict. Shortly before trial, Dr. Richard Kline suggested that one of the instruments used could have led to Liguori's death.

Deposing Kline again was not an option. "At that point, it was too late," Slater said.

Justice Barry Albin asked what Slater would have done differently had he known beforehand of the change.

"I would have talked about how the doctor changed his opinion," said Slater. "There were issues of credibility and I could have prepared for it."

He also rejected Justice Roberto Rivera-Soto's suggestion that he could have attacked Kline during summation. "The damage was done by them," he said.

Elmann's lawyer, Scott Heller of Morrisown's Ghlin & Combs, said Elmman clearly could not leave a patient on the table in order to take care of Liguori's complications, and that Hunter, although not a cardiac surgeon, was qualified to insert the tube. That wasn't heart surgery, Heller said.

Rivera-Soto asked Hunter's lawyer, Judith Wahrenberger, of Springfield's Wahrenberger, Pietro & Sherman, about

his duties. "What does he do at Hackensack University Medical Center?" Rivera-Soto asked. "He wasn't changing test tubes."

Since the hospital is known for its cardiac care facilities and he assisted in the operation, the family may have assumed he was a cardiologist, he said.

Wahrenberger said Hunter's tasks included obtaining patient consent, assisting the staff cardiologists and generally "sparing the attendings" from otherwise ministerial matters.

As for Kline's change in his testimony, Wahrenberger said she, too, was unaware of it until shortly before trial.

Asked by Rivera-Soto whether she believed she had an affirmative duty to notify Slater of the change, Wahrenberger said she did not think it was important enough at the time.

"And, it's up to the plaintiff to prove any deviation" from a standard of care, she said.

"Didn't you say to yourself, 'I have a disclosure obligation?'" asked Justice Virginia Long.



NO SUBSTITUTIONS, PLEASE: Plaintiff's lawyer Adam Slater said his client expected the heart surgeon himself to take care of any post-operative complications. "You don't send in a general practitioner," he argued.

"I didn't appreciate the prejudice," replied Wahrenberger.

"You will in the future," Long said. "Yes, I will," said Wahrenberger. ■