



FROM THE PLAINTIFF'S SIDE

A Case of Bad Communication

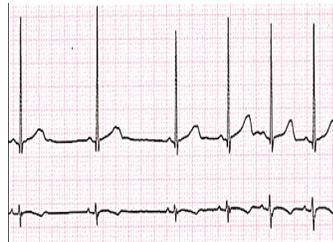
Inside this issue:

A Case of Bad Communication	2
News & Events	1
Case Closed	3

He was 54 years old. The pain began in the center of his chest. It was not sharp, rather a weight or pressure on his chest. It came on suddenly without any exertion. It made him short of breath and caused him to sweat. More importantly, this reminded him of the heart attack he experienced 10 years earlier.

Taking no chances, he went with his wife straight to the ER despite the early morning hour.

He knew something was wrong and wanted to be treated. If it was a heart attack, the best place to be was in the hospital and the worst place to be was at home.



So why did the physicians send him home after 3 hours in the ER?

He died back in his bedroom from a fatal irregular heart beat. Should his death have been anticipated and prevented? Was this a case of medical malpractice?

Not every chest pain represents a life threatening heart problem. ER physicians see all kinds of chest pain and must use their skill and judgment to identify those at risk for impending heart attack.

see *Communication* p 2

John Kassel co-authored an article with Richard Gergel, Esq. in the Spring 2008 South Carolina Trial Lawyer Bulletin entitled, "A Snare to the Unwary: Private –Appearing Entities May Be Persons Covered By The Tort Claims Acts".

In April, 2008 John gave a presentation on Product Liability to the Palmetto Paralegal Association.

In September, John gave a presentation on Product Liability Law to the First Year Students at USC School of Law.

John will also give a presentation on How to Reduce Medicaid Liens in Personal Injury Recoveries at the SC NAELA Fall Meeting.

NEWS & EVENTS

Through our efforts and work involving the South Carolina Department of Health & Human Services, we are excited to see a re-vamping process with regard to Medicaid liens. The department is revising their policies regarding the reduction of liens pursuant to the decision in *Arkansas Department of Health and Human Services v. Alborn*, 547 US, 268, 126 S.Ct. 1752 (2006)

Please visit our website to learn more about the Alborn decision and how it affects lien reduction.

...cont'd Communication

In determining risk for heart attack, physicians look at the quality, location, duration and radiation of pain. They look at risk factors such as, age, smoking history, and weight. They look at past medical history. They do a physical exam, take x-rays, do an EKG and collect blood work to review cardiac enzymes. The question is whether the patient can safely be discharged home or is the risk too great? Should the patient be admitted to the hospital for treatment and for his/her protection in the event a heart attack occurs.

Our client's husband presented to the ER at 12:40 am. He was met by a triage nurse and seen by the ER physicians. The ER physician called the cardiologist on call at 3:00 am. Shortly thereafter, the patient was told everything was o.k. and was sent home. At 5:00 am he died.

Our investigation revealed that his discharge home was premature. The patient's reported symptoms were worrisome for an unstable heart condition that could lead to a heart attack or fatal arrhythmia. Observation for 3 hours was not a long enough time to sort out what was going on. Cardiac enzymes can take hours to rise, signaling a heart attack. Therefore, doctors typically get serial enzymes every 3-4 hours for the next 6—8 hours in order to observe and get a better understanding of the cardiac status. If a bad event happens, the patient is in the right place with a crash cart and resuscitation drugs and personnel at the ready.

It turned out that our concerns were correct. In his deposition, the ER physician admitted that within "2 minutes" of speaking with the patient, he knew the patient needed to be admitted to the hospital. However, ER physicians do not have admitting privileges in the hospitals where they work and must contact an attending physician willing to admit the patient. The ER physician called the cardiologist. The ER physician says he recommended admission. The cardiology said no such recommendation was made. If such a recommendation had been made, the cardiologist said he would have admitted the patient. Each of them had a different description of the phone call. It became a classic controversy of two doctors each pointing the finger at the other. The tragedy was that the patient and his family paid the ultimate price.

The ER Physician admitted that within "2 minutes" of speaking with the patient, he knew the patient needed to be admitted to the hospital.

In this case, litigation against the healthcare providers was brought and resolved favorably on behalf of the family.



If you or a family member or friend have questions about medical care leading to a serious injury or death, come speak with us. Consultations are free. We investigate claims thoroughly and only prosecute those claims with merit. You can reach us at 803.256.4242

CASE CLOSED

Highlights from recently resolved cases

**Products Liability Case -
The Pasta Machine**

Our client was injured on an improperly guarded packing machine resulting in a permanently mangle arm.

The machine was large, with a lot of moving parts, which create hazards that need to be guarded against for workers to remain safe. The manufac

turer of the machine recognized the moving parts as hazardous and encased the



The unguarded gap

machine behind a see through enclosure. However, the enclosure failed to guard the worker from a hazard at the bottom where the worker must access to clean up spills that frequently happen.

Our client suffered a severe crushing injury to the arm while cleaning up such a spill at the bottom of the machine. The client was unaware of a moving part at that part of the machine.

We successfully litigated a claim based on a design and manufacture of a machine with an unguarded hazard in violation of published safety standards.

**Medical Malpractice Case -
Nerve Injury at Surgery**

Our client was injured during a total thyroidectomy, or removal of the entire thyroid gland. Our client noticed an enlargement in his neck and was referred to a specialist who became concerned about a possible malignancy. After tests and x-rays, the physician believed surgical intervention

was the best course of action. He did not have cancer, but an enlarged thyroid called a goiter. During the surgery, the laryngeal nerve on the left side was damaged. Instead of stopping the procedure, the physician continued, and injured the right side nerve as well.

Our client now had bilateral vocal cord paralysis and is permanently disabled due to

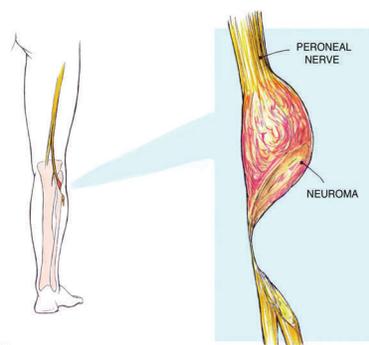
the negligent actions of the surgeon. With the vocal cords paralyzed, our client could not breathe without a trach tube.

We successfully resolved this case for the client based on the physician breaching a standard of care in continuing the surgery after the initial left side nerve injury.

**Medical Malpractice Case -
Failure to Diagnose**

We represented a young child who initially fell on broken glass. There was a deep wound, into the muscle which injured the peroneal nerve. The ER physician failed to check for neurological function of the foot. There was a

delay in treatment. Surgery was eventually performed but it was not effective. We filed a claim for failure to diagnose and a favorable outcome was obtained on behalf of the family of the child.



CASE CLOSED—
Improperly guarded machine that caused crushing injury to arm.

CASE CLOSED—
Physician breaches standard of care during surgery and causes permanent disability

CASE CLOSED—Young child left with permanent injury when healthcare providers fail to recognize nerve injury

In The Next Issue...

Look for our article on another recently closed case. A products liability case quickly became a challenge as we faced a statutory employer issue. Our client was injured on a machine at work, and we had to figure out who the “real” employer was that had responsibility for the injury.



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Call us and let us make a difference for you.

John Kassel

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*Medical Malpractice
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Products Liability
Motor Vehicle/Trucking Accidents
Premises Liability
Insurance Bad Faith
Wrongful Death
Residential Construction Defects*

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