

Jury needs to weigh evidence when there's battle of medical experts

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In a medical malpractice case where a jury heard firsthand evidence to determine whether a defendant physician's conduct fell below the standard of care, the plaintiff wants the judge to give the jury an instruction allowing jurors to find a physician negligent based on the mere fact that there was an injury.

The instruction in legal terms is called *res ipsa loquitur*—"the thing speaks for itself." While it may be appropriate in the rare case where a physician amputated the wrong limb or patient with quadriplegia is unmonitored and falls off an exam table, "it defies logic" to let jurors infer that a defendant doctor didn't meet the standard of care in a typical battle-of-the-experts case, the Litigation Center of the American Medical Association and State Medical Societies and Pennsylvania Medical Society (PAMED) tell the Pennsylvania Supreme Court in an amicus brief.

"Indeed, allowing a jury to be instructed on the *res ipsa loquitur* doctrine in the face of direct evidence in a complicated medical malpractice case will be perceived for what it is: an implicit endorsement of the plaintiff's case, which the jury can, and likely will, use to avoid weighing the evidence," the brief tells the court in the case, *Lageman v. Zepp*.

The brief draws parallels between the *Lageman* case and previous cases that established case law that doesn't allow the *res ipsa loquitur* instruction in cases where the jury was presented direct evidence of what occurred during the medical procedure that caused an injury. It also explains the ramifications of the Pennsylvania Supreme Court upending well-established precedent.

"Giving the jury license to infer, rather than carefully consider the proofs at trial, will significantly expand a plaintiff's ability to convince a jury of a defendant's negligence and unfairly lower the bar to liability for unsuccessful medical treatment, making physicians guarantors of a good outcome," the brief says. "In turn, this will increase medical malpractice liability costs – with no corresponding benefit – and result in all citizens having to foot the bill in the form of higher insurance rates and medical

costs.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

Trial court got ruling right

At trial, Elizabeth H. Lageman’s daughter alleged that anesthesiologist John Zepp, DO, negligently placed a catheter into her mother’s carotid artery during an emergency exploratory laparotomy, causing her mother to suffer a stroke and partial paralysis.

The AMA Litigation Center and PAMED tell the court it was a “run-of-the-mill ‘battle of the experts’ case, in which the jury arrived at a defense verdict.”

Both sides agreed Dr. Zepp placed the catheter into the artery and that it caused the injury. The disagreement was whether there was a breach of the standard of care.

Defendants explained it was more difficult to place the line into Lageman because of her anatomy and that her injury could happen without physician negligence. An expert testified the injury occurred despite Dr. Zepp complying with applicable standards of care.

The plaintiffs and their expert disagreed, arguing that negligent care caused the injury. At trial, they asked the judge to instruct the jury to be allowed to presume negligence from the fact that Lageman experienced an arterial cannulation. The judge denied the request, but the Pennsylvania Superior Court in a 2–1 decision said the refusal to give a *res ipsa loquitur* instruction was improper and granted a new trial.

The Pennsylvania Supreme Court is now considering whether the instruction should be given. The AMA Litigation Center and PAMED are asking the court to reverse the appellate decision.

If it’s not reversed, the Superior Court decision will create a “cloud of liability over the medical profession,” physicians tell the court.

“Allowing a jury to infer negligence simply because a patient has suffered a complication or experienced an adverse result—even when the physician prudently performed the procedure and could not control the outcome—will make physicians less likely to perform these procedures,” says the brief.