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Friday, April 2, 2010



Malpractice suit claim: an old fax number led to cancer death

In February 2005, Lathenia Petty of Pottstown, Pa. went to her doctor to check out a lump she had felt in her left breast. Petty's doctor felt the lump, too, and gave her patient a prescription for a mammogram and an ultrasound.

That's when a cascade of errors began, according to a medical malpractice suit filed in Chester County by Thomas R. Kline. Those mistakes, the suit claims, led to Petty's death from breast cancer in February 2009. She was 30 years old.

What is unusual about the suit is that a Chester County judge has allowed Kline to seek punitive damages against the doctor, Heidi Weston, who then worked in a primary practice for the University of Pennsylvania Health System.

Susan E. Phillips, chief of staff of Penn Medicine, said that the health system, which was also named in the lawsuit, could not comment on pending litigation. James A. Young, a lawyer representing Weston and Penn in the case, also declined to comment.

But in court filings, Young and another defense lawyer denied the allegations in the suit. "It is adamantly denied responding defendants' conduct herein was negligent, much less outrageous or reckless as plaintiff contends," the lawyers wrote.

In April 2005, Petty went to Pottstown Memorial Hospital for the scans of her breast.

The results of the ultrasound were suspicious and the radiologist's report said Petty needed a follow up biopsy to check for cancer. But the fax he sent to Weston never got to her office. The hospital had the wrong number, according to the suit.

In fact, Kline has identified 105 radiology studies performed at Pottstown for Weston's patients, ranging from an x-ray of a 16-year-old's knee in May 2004, to a breast ultrasound in March, 2008, that were sent to the wrong fax number.

And despite a note in Petty's medical record to follow up on the lump, Weston did not raise the problem during seven office visits over more than a year, the suit contends.

Further, the lawsuit claims that in December 2005, when Petty asked again about lump, Weston “told Lathenia to find a surgeon to perform the needed evaluation and testing herself. Dr. Weston’s justification as reflected in her testimony was that she was too busy to spend the hour or so it would have taken to locate a surgeon who would take Petty’s insurance despite the known presence of a breast lump that required immediate biopsy and evaluation.”

Petty had coverage through Keystone Mercy Health Plan, the region’s largest Medicaid HMO.

In a response to the suit, the defense lawyers for Weston and Penn stated that “Weston ordered both a mammogram and ultrasound to investigate the” lump and that “Petty was expected to follow-up with Dr. Weston after the performance of [those] studies.”

Weston’s lawyers further argued that the doctor noted in Petty’s medical record that she had instructed Petty to return to the office after the ultrasound and to call if the size of the lump continued to increase.

Jury selection for the trial is scheduled for Monday, April 5, with opening statements expected on Tuesday. One issue the jury will not examine is whether Petty’s care would have been different had she had private insurance. The new health care law enacted last month is expected to add some 15 million people to Medicaid rolls nationwide.