

## Knee surgery death leads to \$1M settlement

By: Phillip Bantz    December 13, 2013

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The family of a 50-year-old man who died after undergoing outpatient knee surgery has agreed to settle a medical malpractice lawsuit for \$1 million.

The father of three was sent home after his surgery in May 2011 and, a few hours later, suffered a massive pulmonary embolism caused by blood clots in his lungs, according to an attorney for his family, David B. Yarborough Jr. of Yarborough Applegate in Charleston.

Citing a confidentiality provision in the settlement agreement, Yarborough withheld the names of the litigants along with many other details about the case.

He said the defendants – an outpatient surgery center, several physicians and a nurse anesthetist – overlooked obvious warning signs which showed that the patient had formed clots in his blood stream. The man had an abnormal EKG on the morning of his surgery and complained of having shortness of breath, according to Yarborough.

“They should have looked harder and ordered a cardiac workup to figure out what was going on,” he said. “Instead, they sent him into surgery and he came out with all these problems.”

After he went home, the man’s heart rate spiked and he began having trouble breathing. He was rushed to a local hospital, where he was pronounced dead. Yarborough said doctors convinced the man’s wife that an autopsy was unnecessary, which allowed the defendants to contend that her husband had died of something other than an embolism.

“They’re saying your whole case is resting on failure to diagnose a pulmonary embolism,” he said, “but this could have been a heart attack that happened after he left.”

However, one of Yarborough’s experts, Dr. Frank Cuoco Jr. of the Medical University of South Carolina in Charleston, determined from hospital records that the man did, in fact, have a fatal embolism.

“I think that helped get their [the defense’s] attention,” he said of Cuoco’s finding.

The man’s family settled with the defendant doctors – an anesthesiologist and orthopedist – for \$625,000 in November. The family also secured settlements of \$125,000 and \$250,000 with the surgery center and nurse anesthetist, respectively, in August, according to Yarborough.

“He’d had all the signs of someone with a pulmonary embolism,” Yarborough said, “and they just didn’t recognize it.”

### SETTLEMENT REPORT: WRONGFUL DEATH

**Case name:** Details that could potentially identify the parties were withheld as part of confidentiality agreement

**Date of settlement:** Aug. 13 with certified registered nurse anesthetist (CRNA) and surgery center; Nov. 14 with physicians

**Amount:** \$1 million total (\$625,000 by physicians; \$250,000 by CRNA and \$125,000 by surgery center.

**Attorneys for plaintiff:** David B. Yarborough Jr., William E. Applegate IV and Douglas E. Jennings (Charleston)

**Attorneys for defendants:** Withheld