



blood pressure and venous gangrene. Mr. Ritter underwent yet another set of surgical procedures on September 21, 1996. Mr. Ritter passed away September 22, 1996.

Plaintiffs' claim against Dr. Chu is set forth in Count III of the Third Amended Complaint. Plaintiffs allege Defendant was negligent in failing to properly perform the left heart catheterization, coronary angiogram, left ventriculogram and PCTA, causing a puncture which led to the left retrograde dissection, which led to Mr. Ritter's death. Defendant filed the instant Motion August 1, 2000, attaching to it as Exhibit "D" an Affidavit of Non-Involvement, pursuant to 40 P.S. §1301.826-A, which provides as follows:

**§ 1301.827-A. Affidavit of noninvolvement**

- (a) Any health care provider named as a defendant in a medical malpractice action may cause the action against that provider to be dismissed upon the filing of an affidavit of noninvolvement with the court. The affidavit of noninvolvement shall set forth, with particularity, the facts which demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant, and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant.

Here, Defendant set forth in his affidavit that: (1) his participation was limited to the performance of a diagnostic catheterization upon Mr. Ritter (involving the first three procedures set forth *supra*); (2) he was not involved in the PCTA (the fourth procedure); and (3) he was not involved in any procedure which caused the development of a retrograde dissection, nor any medical care and/or treatment which formed the basis for the lawsuit. Defendant also submitted to this Court the Cardiac Catheterization Report (Exhibit "B") and PCTA Report (Exhibit "C"). No mention of the retrograde dissection is made in the former. In the PCTA report, the following is recorded:

On follow-up angiography, the actual site of angioplasty does appear remarkably improved with reduction in the stenosis from a 90% down to a 20-30% residual stenosis, and with excellent flow. There has, however, been a retrograde dissection back from the proximal portion of the anterior descending back into the left main coronary artery itself with continuing involvement down the left circumflex...

RESULTS:...[F]ollow-up angiograms demonstrate despite this locally successful result at the lesion itself, a definite complication which is a retrograde dissection back from the proximal anterior descending back into the left main coronary with propagation into the left circumflex...

SUMMARY:...The patient has undergone percutaneous transluminal coronary angioplasty of the left anterior descending coronary with an anatomic success at the site of the angioplasty but with a definite retrograde dissection back into the left main with propagation to left circumflex.

Because the retrograde dissection is not mentioned in the procedures in which Defendant admits involvement, but only in the PCTA report, a procedure Defendant claims he had no part in, he argues his Affidavit of Noninvolvement should cause this action to be dismissed against him. We disagree.

The statute requires a statement that the provider was not involved in the care and treatment of the claimant, nor obligated to provide for the care and treatment of the claimant. Obviously, here Defendant was involved, by his own admission, in the care and treatment of Mr. Ritter. Moreover, notwithstanding that the retrograde dissection was not detected until after the PCTA, there is nothing in the record thus far to establish that the retrograde dissection was in fact caused by the PCTA, rather than one of the earlier procedures in which Defendant was involved. We are therefore unpersuaded by Defendant's conclusion in the Affidavit that, as he was not involved in the PCTA, he was not involved in *any* procedure which caused the retrograde dissection. As included in the allegations of Plaintiff's Complaint, it could well be that the complication could only have been caused by the PCTA, or that if it

had been caused during the earlier procedures it would have been immediately apparent and noted in the post-operative report. If either is shown to be the case as discovery continues, then Defendant may seek once again to be dismissed from this case, most likely by a motion for summary judgment. However, unless this question is unequivocally resolved prior to trial, it is a question fairly raised by Plaintiffs' Third Amended Complaint in paragraphs 66-66.6, wherein the retrograde dissection is claimed to have been caused during any of the four procedures. Therefore, at this time the Court sees no reason why the determination of this question should be removed from the province of the jury.<sup>1</sup> Accordingly, the Motion to Dismiss is denied.

---

<sup>1</sup> As the Motion is denied based upon the insufficiency of Defendant's Affidavit, the Court will not address Plaintiffs' second argument regarding the constitutionality of the statute.