

COA Opinion: The proper standard of care for family practitioner working at an urgent-care center is that of a specialist in emergency medicine

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On July 29, 2010, the Michigan Court of Appeals released its published opinion in [Estate of Jilek v. Stockson, No. 289488](#). Daniel Jilek sought treatment at Maple Urgent Care Center complaining of sinus and respiratory congestion, and chest tightness. Dr. Stockson, board certified in family practice medicine, was the treating physician. Five days after treatment, Jilek died of heart attack, which occurred as a result of Jilek's coronary artery disease. Jilek's estate sued Dr. Stockson for negligently failing to diagnose the coronary artery disease, arguing that if she had discovered the condition, Jilek would have received proper treatment and his death would have been prevented. The trial court instructed the jury that the applicable standard of care was that of "a physician specializing in family practice and working in an urgent care center." The trial court also refused to admit several documents describing the internal policies of the Maple Urgent Care Center. The jury rendered a verdict in favor of Dr. Stockson. Jilek's estate appealed, arguing that the trial court applied the improper standard of care and erred in refusing to admit the internal policies. The Court of Appeals agreed, and reversed and remanded for a new trial.

The court noted that the proper standard of care is that of the "most relevant" medical specialty. A "physician specializing in family practice and working in an urgent care center" is not a medical specialty. Considering the circumstances under which Dr. Stockson practiced, the court held that the most relevant medical specialty was emergency medicine. It was not dispositive that Dr. Stockson was not board certified in emergency medicine. The focus is on what sort of medicine she was practicing, here, emergency medicine.

The court also held that the trial court erred in refusing to admit the internal policies of the Maple Urgent Care Center. The documents were admissible to determine the applicable standard of care. The internal policies could stand alone as evidence of the proper standard of care, but the jury could consider them along with expert testimony in deciding the standard. The court went on to exclude several of the internal policies as irrelevant to the particular case because they were not triggered by Jilek's treatment, but the court ordered the balance of the policies to be admitted.

Judge Bandstra [dissented](#). Judge Bandstra approved the trial court's determination of the standard of care. The parties presented evidence of the proper standard of care used by (1) a family practitioner, Dr. Stockson's specialty; (2) an urgent-care doctor; and (3) an emergency-room doctor. Given the circumstances, Judge Bandstra considered this appropriate. Judge Bandstra also considered the internal policies properly excluded

under *Gallagher v. St. John Hospital & Medical Center*, 739 N.W.2d 392 (Mich. Ct. App. 2007), which Judge Bandstra viewed as prohibiting the introduction of such internal policies.