

## NEWS & TRENDS

### **Judge, upset by doctor's testimony, allows punitives in medical malpractice case**

Careless words in a medical malpractice deposition came back to haunt a Florida hospital when a judge reacted with an extremely rare decision to allow punitive damages.

The ruling's impact was evident a week later when the hospital and several of its doctors made a final push to settle the case and granted the family of Edith Graupera significant damages. (*Aleman v. Lifemark Hosps. of Fla., Inc.*, No. 02-04540 CA 30 (Fla., Miami-Dade Cir. Ct. Apr. 18, 2003).)

"When the conduct is outrageous enough to warrant asking for punitive damages, the cases almost always settle," said Thomas Masterson of St. Petersburg, Florida, chair of ATLA's Professional Negligence Section, who has followed the case. "I can't emphasize how rare it is. I have had only one or two cases in my years doing this where it has been appropriate to ask for punitive damages."

To receive punitive damages, the plaintiff must prove that a doctor intentionally made an error.

The lawyer who represented Graupera's family, Stuart Ratzan of Miami, attributed the victory to the "egregious situation" in which the 23-year-old Ecuadorian immigrant found herself in April 2000. After feeling nauseated and fainting, she was taken to Palmetto General Hospital outside Miami. She had a small abscess under her left arm but was held in the emergency room for 12 hours before she was finally diagnosed with toxic shock syndrome—a