

## PCA Pump Unplugged, Data Lost: Court Sees No Spoliation Of The Evidence.

The parents' minor child died suddenly in his hospital room in the early a.m. hours the day after surgery for Crohn's disease.

At the time of his death the patient was on narcotics for pain dispensed through a PCA pump. Shortly after his death a nurse unplugged the pump, which caused the time and dosage data for the patient to be purged from the machine's electronic memory.

The hospital got the parents' permission and did a limited autopsy of the abdomen, pelvis and chest which did not reveal an obvious cause of death such as post-surgical bleeding or pulmonary embolus. No toxicology screens were done. The official cause of death on the death certificate was "unknown."

### Parents' Lawsuit Alleged Spoliation of the Evidence

The parents sued the surgeon, the hospital and the pathologist who did the autopsy. Their lawsuit alleged malpractice by the surgeon and spoliation of the evidence by the hospital and the pathologist.

The Court of Appeal of Louisiana dismissed the parents' case.

The hospital had no legal duty on their behalf to collect the evidence they claimed was the subject of their lawsuit for spoliation of the evidence.

The hospital had no obligation to keep the PCA pump plugged in, download the time and dosage data and make it part of the hospital record, the Court ruled.

There was no litigation pending or threatened at the time the pump was unplugged. Nor was there any basis at that time to believe that the patient's death was caused by an adverse drug reaction or overdose of narcotic medication, as opposed to an unexpected idiopathic cardiac event which was, albeit later, not ruled out by the autopsy, the Court pointed out.

There was no basis for the parents' allegation that the nurse who unplugged the PCA pump did so with the deliberate intention of destroying legal evidence, the Court said. **Clavier v. Our Lady of the Lake**, \_\_\_ So. 3d \_\_\_, 2012 WL 6725825 (La. App., December 28, 2012).

***Spoliation of the evidence refers to intentional destruction of evidence for the purpose of depriving an opponent of its use in a legal proceeding.***

***When a party to litigation is unable to produce evidence within its control, the courts historically have applied a presumption that the evidence would have been damaging to the party's position in the litigation.***

***Intentional spoliation of the evidence can be grounds for a lawsuit, apart from the underlying questions of malpractice which the patient or patient's family may or may not be able to prove due to the fact the evidence is missing.***

***The obligation to preserve evidence only arises when it is foreseeable that the evidence will be needed in the future by the other side in a legal proceeding.***

***When the PCA pump was unplugged there was no litigation pending or threatened and there was no basis to believe the death was caused by a drug reaction or narcotics overdose.***

***Negligent, inadvertent or accidental destruction of the evidence is not grounds for a lawsuit.***

COURT OF APPEAL OF LOUISIANA  
December 28, 2012

## E.R.: Nurse Did Not Force Patient To Sign Release, Suit Dismissed.

The adult patient came to the E.R. after being injured falling from his bicycle. When he spoke with the hospital's nutritionist the next day he reportedly said, "I will kill myself if I don't lose weight."

That same afternoon he wanted to check himself out of the hospital but was told he first had to be seen by the psychiatrist because he had expressed a desire to harm himself. After he was seen by the psychiatrist the nurse told him he still could not leave because the psychiatric service had not authorized his discharge.

He insisted he was going to leave anyway, whether or not it was authorized. The nurse told him he had to sign a document releasing the hospital and its staff from legal liability resulting from his voluntary departure against medical advice. Later the nurse did allow him to leave without signing anything.

***The nurse at first told the patient he had to sign a document releasing the hospital from liability resulting from his leaving against medical advice.***

***After he refused, the nurse spoke with someone on the phone and then told the patient she could not force him to sign anything and he was free to leave.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
December 4, 2012

The Superior Court of New Jersey upheld the jury's verdict dismissing the lawsuit the patient had filed against the hospital alleging false imprisonment and intentional infliction of emotional distress. The facts showed only a genuine concern by hospital staff for the patient's wellbeing and no malicious intent, the Court said. **Greenstein v. Moonthungal**, 2013 WL 149658 (N.J. Super., December 4, 2012).