

## Fire In O.R.: Court Puts Burden Of Proof On Caregivers.

The patient was having surgery to remove tumors from his neck and ear. The anesthesiologist had him on blow-by O<sub>2</sub> from a tube by his nose which was separated from the surgical field on the side of his head by sterile surgical drapes.

A spark from the Bovie ignited the surgical drapes. The O<sub>2</sub> was turned off and the drapes were pulled away, but not before the patient was burned.

The anesthesiologist's insurance paid a settlement to get her out of the lawsuit. The Court of Appeals of Indiana ruled there still were legal grounds for the patient to sue the surgeon and the hospital.

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***The standard of care is not the issue. The patient can invoke res ipsa loquitur.***

***A fire in the operating room is something that does not happen in the ordinary course of events.***

***The doctors and the perioperative nurses were in control of all the equipment that caused the fire.***

COURT OF APPEALS OF INDIANA  
April 14, 2008

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The court allowed the patient to invoke the legal rule of "Res ipsa loquitur," Latin for, "It speaks for itself."

Common-sense, the court said, tells us that a patient is not supposed to be burned by a fire in the operating room and it should not happen unless one or more caregivers have been negligent. The court relied on a prior case setting a legal precedent with an oxygen mask leaking on the side causing exactly the same outcome. The patient may, but is not required to have expert testimony on the standard of care. ***Cleary v. Manning***, \_\_ N.E. 2d \_\_, 2008 WL 1701176 (Ind. App., April 14, 2008).