

O.R.: Common Practice Is Not Always The Standard Of Care.

The surgeon had planned to resect the patient's bone tumor and reconstruct her knee all in the same procedure.

During the case, after the tumor was out but before the reconstruction began, the surgeon was told of a phone call just received from the outside vendor who sterilized instruments for the hospital that a test strip for the batch of instruments they had in the room was positive for bacterial growth forty-eight hours after sterilization.

The surgeon inserted a spacer to stabilize the knee and stopped what else he was doing. Six weeks later the reconstruction was done. The patient died from her osteosarcoma.

Her mother sued the hospital as personal representative of her daughter's probate estate over the fact her daughter had to have two surgeries instead of just one.

It may be true, as the hospital's expert says, that it is not common practice among hospitals to quarantine surgical instruments pending the outcome of bacterial culturing which, if positive, could indicate less than effective sterilization.

COURT OF APPEALS OF TENNESSEE
March 3, 2010

The case has not gone to trial. There has been no definitive ruling whether the hospital was guilty of negligence.

However, the Court of Appeals of Tennessee ruled that the hospital's expert's assertion that hospitals generally do not quarantine instruments after sterilization to await the results of biological testing does not prove the hospital was not negligent.

Common practice and reasonable care are not necessarily the same thing under the law, the Court pointed out. **Turner v. Steritek**, 2010 WL 744519 (Tenn. App., March 3, 2010).