

Operating Room Electrocautery Patient Burned

The trial judge dismissed the patient's case, sent the jury home without letting them deliberate to reach a verdict and entered a judgment in favor of the surgeon and the anesthesiologist and the hospital that employed the circulating nurse and the surgical technician.

The trial judge could find no deviation from the standard of care, that is, the judge ruled no one involved in the record of events in the operating room committed any specific error or omission.

However, the Court of Appeals of Indiana overturned the trial judge's decision. It ordered the case retried and submitted to the jury with an instruction to apply the legal rule of *res ipsa loquitur*.

The seventy-eight year old patient came in for a carotid endarterectomy to be done with her awake and sedated under moderated anesthesia care. According to the court, that option was chosen to keep the patient responsive and better to allow her vital signs to be observed.

The patient was to receive oxygen through a face mask while a Bovie electrocautery tool would be used to dissect the

In a case like this a patient should not have the burden of proof that the surgeon, anesthesiologist, circulating nurse or surgical tech did anything negligent.

When an adverse event happens in the operating room, and common sense says it is something that is not supposed to happen, the judge can tell the jury to apply the rule of res ipsa loquitur which means, "The thing speaks for itself."

Common sense says a patient is not supposed to catch fire and be burned in the operating room, so this patient is entitled win her case without having to prove any specific negligent error or omission.

The oxygen mask probably was not sealed tight to her face and the Bovie sparked combustion of the patient's hair or the PhisoHex on her skin.

COURT OF APPEALS OF INDIANA, 1999.

tissue on the side of her neck only four inches from the face mask.

According to the court, the circulating nurse prepped the patient's face and neck with PhisoHex in the operating room. Then the face was draped in a way that the oxygen mask could not be seen.

During the procedure a popping sound was heard from the electrocautery unit control box. The anesthesiologist checked the power settings. Then another popping sound was heard and the patient began squirming and became agitated. Then the surgeon realized the oxygen mask had caught on fire. The mask was promptly removed, but only after the patient's face and chest were burned.

The oxygen mask apparently was not tightly sealed to the face or somehow was bumped. A spark from the Bovie stylus started combustion, with the patient's hair or the PhisoHex on her face as the fuel for the pure O₂ leaking, the court believed.

The Court of Appeals wanted to give the patient the benefit of the doubt. It ruled the trial judge should have let the jury decide the case after being given a *res ipsa loquitur* instruction. That instruction is commonly given in operating-room cases when the judge wants to let the jury infer from their common sense that negligence must have been committed due to the unaccustomed nature of the accident.

Res ipsa loquitur enables the patient to prove a case when the events point to no specific breach of the standard of care. ***Gold v. Ishak*, 720 N.E. 2d 1175 (Ind. App., 1999).**

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