

Operating Room: Patient Falls Off Table, Court Uses *Res Ipsa Loquitur*.

R*es Ipsa Loquitur* is the Latin phrase for a traditional legal doctrine the courts often look to in operating-room cases.

It means "Let the thing speak for itself." When an event occurs which ordinarily does not occur without someone being negligent, the injured party does not have to prove the defendants were negligent. The defendants have to prove they were not negligent or the court enters a civil judgment against them for damages.

The New York Supreme Court, Appellate Division, ruled recently that an unconscious patient falling off the operating table while being repositioned ordinarily does not happen without someone being negligent. The surgical team failed to come forward with an explanation how they were not negligent, so judgment was entered against the hospital in favor of the patient. **Thomas v. New York University Medical Center, 725 N.Y.S.2d 35 (N.Y. App., 2001).**

Operating Room: Patient Codes, Court Says No To *Res Ipsa Loquitur*.

The anesthesiologist was called into another room for an emergency cesarean. He left the circulating nurse in charge of bringing the patient out of anesthesia at the end of spinal fusion surgery. The nurse stopped the respirator to see if the patient was recovering from muscle paralysis, then manually bagged her for a few seconds and restarted the respirator. She soon coded, could not be revived and died.

The widower sued the hospital and the anesthesiologist. The Superior Court of Pennsylvania ruled the it was correct not to apply the legal rule of *res ipsa loquitur*, because a patient can code under anesthesia without anyone being negligent. The defendants did not have to prove they were not negligent. The widower had to prove the nurse or the anesthesiologist was negligent, and proof of that was lacking. **Magette v. Goodman, 771 A. 2d 775 (Pa. Super., 2001).**

Operating Room: Court Says Doctor Is No Longer The "Captain of the Ship," Holds Nurses Liable.

The Supreme Court of Wisconsin recently refused to hold the surgeon responsible for an incorrect sponge count as "captain of the ship" in a hospital's operating room.

A laparotomy pad was left inside the patient during gallbladder surgery. It had to be removed two and one-half months later. The patient recovered fully, but sued and was awarded \$150,000. The hospital's liability was limited by state law to \$50,000, so the patient tried to collect the rest from the surgeon as "captain of the ship."

The surgeon had no knowledge the sponge count was incorrect. The court ruled that sponge, needle and instrument counts are strictly the responsibility of the circulating and scrub nurses, who were hospital employees.

The "captain of the ship" doctrine

Legal scholars across the US are reporting a sharp decline in the courts' use of the legal doctrine of the surgeon being the "captain of the ship" in the operating room.

In the modern world hospitals are big businesses. Hospitals draw in the patients. Hospitals must train the personnel they provide and must take responsibility for their errors and omissions.

SUPREME COURT OF WISCONSIN, 2001.

would have made the surgeon liable to pay damages whether or not the surgeon himself was negligent.

In most cases the surgeon is an independent contractor and the operating room personnel are hospital employees. Generally a hospital is liable for a surgeon's negligence only if the surgeon is a hospital employee.

If nurses or other surgical personnel are the surgeon's employees, the surgeon is liable for their errors and omissions, as their employer, not as the "captain of the ship."

Operating room nurses and the hospitals who train and supervise them have the legal responsibility for counts being correct, the court ruled. **Lewis v. Physicians Insurance Company of Wisconsin, 627 N.W. 2d 484 (Wis., 2001).**