

Retained Surgical Sponge: Court Allows Patient To Sue Under *Res Ipsa Loquitur*.

There is no explanation for the presence of a laparotomy sponge in the patient's abdomen other than the negligence of the surgical team.

The patient had no other surgeries between the first surgery and the second surgery at which time the sponge was located and removed.

His intermittent abdominal pain started shortly after the first surgery.

The legal rule of res ipsa loquitur in healthcare settings requires the patient to rule out other explanations.

That does not make it relevant that the surgeon elected while exploring during the second surgery to remove the gallbladder and a portion of the bowel, or that the patient had other medical issues like coronary artery disease, diabetes mellitus and a history of esophageal cancer.

The patient had other medical issues but none of those answer the basic question, why a laparotomy sponge was left in his abdomen.

The hospital admitted the obvious fact it was left inside him but denied that that was negligent.

SUPERIOR COURT OF PENNSYLVANIA
July 23, 2014

The patient underwent surgical excision of a portion of his cancerous esophagus and proximal stomach.

Starting right after the surgery he began having intermittent lower abdominal pain. Finally he went to an emergency department where a CT scan revealed the presence of a lap sponge in the right upper quadrant of the abdomen.

A second surgery was done four years after the first to remove the lap sponge.

At the same time the gallbladder and a portion of the small bowel were removed, which apparently had nothing to do with the presence of the lap sponge nearby.

Eight days later another procedure was done for further drainage of an abscess which had been caused by the sponge's presence.

The patient's lawsuit resulted in a summary judgment for the patient's healthcare providers involved in the first surgery.

However, the Superior Court of Pennsylvania reversed that judgment and remanded the case for trial in which the jury will be instructed on the patient's behalf that they may consider the legal rule of *res ipsa loquitur* (it speaks for itself).

Res Ipsa Loquitur

Res ipsa loquitur is a legal rule sometimes invoked by patients in healthcare litigation which exempts the patient from the customary requirement to produce a competent expert witness to establish the standard of care and show that the healthcare providers deviated from it.

The courts have consistently ruled, without delving into the particular details, that a foreign object still inside a patient after surgery is something that ordinarily does not happen without negligence.

The rule has also placed liability on healthcare providers in cases where quadriplegic, anesthetized or other helpless patients have fallen from exam tables or operating room beds. Their healthcare providers are assumed to be at fault. The law does not penalize such a patient when the patient can offer no direct observational proof how the injury happened. ***Fessenden v. Robt. Packer Hosp.***, __ A. 3d __, 2014 WL 3615247 (Pa. Super., July 23, 2014).

Discharge: Failure To Communicate Leads To Hospital Patient's Death.

The patient was discharged from the hospital by a nurse at 12:05 p.m. following a colonoscopy that was finished at 9:30 a.m.

The next morning the patient's daughter found him dead at home in his apartment.

The autopsy fixed the cause of death as acute peritonitis due to ascending colon perforation during the colonoscopy.

A hospital is protected from legal liability when its nurses follow the orders of a private physician selected by the patient, except when the nurses know that the physician's orders are so clearly contraindicated by normal practice that ordinary prudence requires the nurses to question the correctness of the orders.

SUPREME COURT
ERIE COUNTY, NEW YORK
August 1, 2014

The New York Supreme Court, Erie County, declined to grant summary judgment to the hospital that the nurse was not negligent or to the physician that the nurse, and not he, was negligent.

The only written order to the nurse was a standard order to discharge the patient when his post-anesthesia Aldrete criteria were met.

The physician claimed he gave her a verbal order when he saw the patient not to discharge him until he came back later, which was never transcribed and when the physician came back the patient was gone.

There was a document found in the chart ostensibly signed by the patient, without a witness, indicating he was leaving AMA, but the nurse testified he did not leave AMA. ***Clune v. Moore***, __ N.Y.S.2d __, 2014 WL 3817580 (N.Y., August 1, 2014).