

## Vascular Catheterization: Guide Wire Left Inside Disabled Patient, OR Physicians, Nurse Liable.

A thirty year-old man suffering from obesity, asthma and mental retardation was admitted to the hospital for shortness of breath, swelling in his legs and recent fifty-pound weight gain.

It is not clear from the court record in the Superior Court of New Jersey, Appellate Division, why the patient was intubated to begin with. However, during a planned extubation the patient coded. He could not be re-intubated promptly and an emergency tracheostomy was started.

As the ENT and anesthesiologist were working on the trachea, several resident physicians and at least one nurse made a number of tries through both the right and left femoral veins in the groin to insert a triple-lumen catheter.

### Guide Wire Left in the Body

During the process, a fifty-two cc guide wire was left inside the patient's body lodged in his vascular system.

### Systemic Infection

### Heart Valve Surgery

### Death

The guide wire remained inside the patient for fifty-two days. During that time he developed systemic bacterial infection that spread to a heart valve. He had open-heart surgery to remove and replace the infected heart valve, then died shortly after the procedure.

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***To sue for malpractice, as a general rule, the patient must prove the applicable standard of care, a deviation from the standard of care and that the deviation caused the patient injury.***

***However, the legal rule putting the burden of proof on the patient is reversed when an unconscious, helpless patient is the victim of an error not ordinarily expected and outside the scope of the surgery, like an object being left inside the patient's body.***

***In this scenario, the medical and nursing professionals having control and custody of the patient are legally liable for harm suffered by the patient, unless they can prove their own non-culpability.***

***A caregiver has, at best, a very difficult burden of proof proving that he or she is not liable for leaving an object inside the patient.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
March 12, 2007

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### Foreign-Body Case

### Caregivers Must Prove Non-Culpability

The court rejected the caregivers' arguments for dismissal and allowed the patient's family's suit to go forward.

The court ruled that this patient's medical and nursing caregivers should be held accountable unless they can answer certain questions with facts that will disprove their own negligence. That is the polar opposite of the usual legal burden of proof in professional malpractice.

First, how was the guide wire not accounted for right away by the medical and nursing personnel in the OR?

Second, why was a suspicious line showing up on early x-ray films not investigated and not linked to the most likely explanation, that a vascular lumen guide wire was still inside the patient?

Third, how did the patient's post-operative infection continue so long without investigation as to its cause and without action being taken sooner than it was?

This was not a case where the guide wire was intentionally left inside the patient as an exercise of medical judgement. Nor was the wire left inside a regular possible complication of the procedure.

The court believed the OR physicians and nurses must have actually known they had lost the guide wire and it was still inside the patient. They had the duty to report what happened right away and an ongoing duty to come forward rather than let the patient's condition deteriorate over time. Gronostajski v. Sabin, 2007 WL 715666 (N.J. App., March 12, 2007).