

## Patient Death: Hospital Held Liable For Fraud In Obtaining Consent To Perform Autopsy.

The sixty-one year-old patient entered the hospital for treatment of kidney stones.

Three days into his hospital stay he was found dead ninety minutes after a hospital nurse administered Demerol and Phenergan which had been ordered in combination for pain control and sedation.

The patient's widow's lawsuit alleged, among other things, that the nurse was negligent for administering medications which can cause respiratory depression and then failing to check on the patient for ninety minutes, an excessive delay under the circumstances.

Any patient's respiratory status must be monitored after receiving narcotic medications and this patient in particular had impaired liver function which could have hindered effective clearance of the medication from his system.

However, the jury in the District Court, Harris County, Texas was not convinced there was any violation of the standard of care by the patient's nurse.

The jury nevertheless awarded the widow \$2,000,000 in damages from the hospital for what happened shortly after the patient died.

Representatives from the hospital persuaded the widow to authorize an autopsy by a pathologist chosen and paid for by the hospital. The widow reportedly was told that the county medical examiner would not take the case and that the hospital was trying to spare her from having to hire a private pathologist which would be prohibitively expensive for her.

Urine and blood samples taken from the corpse by the hospital's pathologist were disposed of after the autopsy. The patient's heart was kept for further study. The corpse was released to the family for burial without the heart and without the family even knowing that the heart was missing.

### **Spoliation of the Evidence**

#### **Interference With the Right of Internment**

Depriving the patient or the patient's family of the evidence of a possible malpractice claim, molesting the patient's remains or depriving the patient's next of kin of the ability to conduct a proper funeral and burial are grounds for legal liability separate and apart from professional malpractice. **Carswell v. Christus Health, 2010 WL 4079656 (Dist. Ct. Harris Co., Texas, September 13, 2010).**