

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Operating Room: Surgical Error Blamed, In Part, On Circulating Nurse's Negligence.

The fifteen year-old patient was scheduled for surgery on the right side of his brain to remove a right temporal lobe lesion that was believed to be causing his epileptic seizures.

The surgery began with the surgeon making an incision on the left side, opening the skull, penetrating the dura and removing significant portions of the left amygdala, hippocampus and other left-side brain tissue before it was discovered that they were working on the wrong side.

The left-side wound was closed, the right side was opened and the procedure went ahead on the right, correct side.

The error in the O.R. was revealed to the parents shortly after the surgery, but only as if it was a minor and inconsequential gaffe.

The patient recuperated, left the hospital, returned to his regular activities and graduated from high school before his parents could no longer deny he was not all right. After a thorough neurological assessment he had to be placed in an assisted living facility for brain damaged individuals.

When the full magnitude of the consequences came to light a lawsuit was filed which resulted in a \$11 million judgment which was affirmed by the Supreme Court of Arkansas.



***A circulating nurse has a legal duty to see that surgery does not take place on the wrong side of the body.***

***The preoperative documents failed to identify on which side the surgery was to be done.***

***It was below the standard of care for the circulating nurse not to notice that fact and not to seek out the correct information.***

SUPREME COURT OF ARKANSAS  
December 13, 2012

### **Surgical Error Blamed, In Part, On Circulating Nurse's Negligence**

The Court accepted the testimony of the family's nursing expert that a circulating nurse has a fundamental responsibility as a member of the surgical team to make sure that surgery is done on the correct anatomical site, especially when it is brain surgery.

The circulating nurse is supposed to understand imposing terms like selective amygdala hippocampectomy and know the basics of how it is supposed to be done.

Hospital policy called for the surgeon, the anesthesiologist, the circulating nurse and the scrub nurse or tech to take a "timeout" prior to starting a surgical case for final verification of the correct anatomical site.

The circulating nurse should have available three essential documents, the surgical consent form, the preoperative history and the O.R. schedule.

The full extent of the error, that is, a full list of the parts of the brain that were removed from the healthy side, should have been documented by the circulating nurse, and failure to do so was a factor that adversely affected the patient's later medical course, the patient's nursing expert said. ***Proassurance v. Metheny***, \_\_ S.W. 3d \_\_, 2012 WL 6204231 (Ark., December 13, 2012).

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