

Facts Concealed From Family: No Negligence, But Civil Fraud Lawsuit Can Go Forward.

The elderly stroke patient's internist ordered a nasogastric feeding tube.

The tube was confirmed ostensibly in the stomach by an x-ray, but an x-ray the next day showed it was in the lung, not the stomach. The tube was removed, re-inserted and again confirmed by x-ray in the stomach.

The patient died two days later. His post-mortem reportedly pointed to pneumonia aggravated by aspiration of nutrition into the lung.

The family's medical expert's opinion does not identify any error or omission by the physician or the hospital staff which fell below the standard of care. There is no proof of negligence.

However, the family still has grounds to sue if they can prove the physician or the hospital intentionally tried to conceal the facts.

COURT OF APPEALS OF GEORGIA
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The Court of Appeals of Georgia ruled there was no evidence of negligence by the physician or the hospital staff.

Nevertheless, the family will be allowed their day in court to sue for fraud if they can prove that the internist or hospital staff intentionally tried to conceal the basic fact that aspiration of nutrition into the lung through the feeding tube was a factor in the patient's demise. ***Roberts v. Nessim***, __ S.E. 2d __, 2009 WL 597191 (Ga. App., March 10, 2009).