

## X-ray Search For Contraband, With Search Warrant: Patient's Rights Were Not Violated.

After the suspect was arrested for driving without a license the police officers were informed that he had secretly inserted a packet of drugs into his rectum.

Based on this information, with the suspect still in custody, the police obtained a search warrant to search his anal cavity for drugs.

He was taken to a nearby hospital emergency room. The E.R. nurse noted on the intake form that the purpose of his visit was a warrant cavity search for drugs with police present.

The E.R. physician verified that the police had a search warrant and then performed a digital exam of the patient's rectum. The patient strenuously objected to the procedure but did not attempt to resist.

No contraband was discovered during the digital exam, so the physician ordered a standard kidney/ureter/bladder x-ray. The patient was still adamant that he did not consent, but again he did not attempt to resist.

The x-ray was read by a radiologist. There was nothing in the anal cavity. The suspect was released without being charged with anything more serious than driving without a license.

The suspect sued the police officers for violating his Constitutional rights. The US Court of Appeals for the First Circuit ruled his rights were not violated.

### X-ray Used for Body-Cavity Search

A medical x-ray, like a manual body cavity search or a blood draw, is appropriate without the patient's consent if the police have probable cause that evidence of a crime will be found and the procedure is done by medical professionals according to professional medical standards.

A search warrant is not necessary if the police have probable cause. However, the Court pointed out that a search warrant provides an extra layer of legal protection to the police and the medical professionals by placing them on solid ground on the question whether probable cause did exist, in case their actions are later challenged in court.

In contrast, forcing a suspect to undergo surgery, for example to extract a bullet for forensic ballistic testing, is never appropriate.

It was not relevant that the x-ray imaged other parts of the body beyond the anal cavity itself, the Court said. **Spencer v. Roche**, \_\_\_ F. 3d \_\_\_, 2011 WL 4916925 (1st Cir., October 18, 2011).

## Labor & Delivery: Physician Did Not Depart From Accepted Practice, Nurses Not Liable In Suit.

The mother had to undergo a cervical cerclage procedure five months into her pregnancy with triplets.

Soon after that she began a series of admissions to the hospital for vaginal bleeding. During the last of these visits the plan was observation, bed rest and administration of tocolytic medication.

The mother began to experience nausea, vomiting, continued vaginal bleeding and low blood pressure.

The mother's obstetrician decided to do an emergency cesarean and delivered the babies at 30 1/2 weeks gestation. During the procedure it was discovered that the cerclage had eroded through the mid and posterior portions of the cervix.

The babies were diagnosed with brain damage sustained either in the uterus or during the cesarean procedure.

***The nurses who cared for the mother were not expected to exercise independent medical judgment in her treatment.***

***None of the actions or orders of the attending physicians were clearly contraindicated or so far outside the realm of accepted obstetrical practice as to require the nurses to inquire with the physicians or to advocate on the mother's behalf.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
October 11, 2011

The New York Supreme Court, Appellate Division, dismissed the parents' lawsuit as it pertained to the nurses who cared for the mother during her last visit.

Labor and delivery nurses are not expected by the law to exercise independent medical judgment apart from following the orders and carrying out the plan of the attending physician.

Only if the labor and delivery nurses observe actions or receive orders from the attending physician or physicians which are clearly contraindicated by accepted obstetrical practice are the nurses required to inquire as to the correctness of what is going on or to advocate through the nursing chain of command for a different medical course. **Bedard v. Klien**, \_\_\_ N.Y.S.2d \_\_\_, 2011 WL 4839159 (N.Y. App., October 11, 2011).