
Medical Equipment Defective

Spoliation of the physical evidence needed by a patient to go ahead successfully with a products liability claim against a medical device manufacturer, or needed for a medical negligence claim against the healthcare provider who treated the patient, can lead to dire legal consequences, the California Court of Appeals has ruled.

In this case, a patient had a non-malignant mole removed above her eyebrow. The electrocautery tool used in the procedure ignited the oxygen mixture being used for anesthesia, resulting in severe third-degree burns to the patient's face which required at least four skin grafts, according to the court record. The physician's records indicated that the incident was caused by the failure of the electrocautery equipment, although the court would later believe the oxygen tank, regulator or tubing were more likely culprits.

The patient's lawyer promptly wrote to the hospital where this happened, demanding that the hospital identify the manufacturer of the equipment involved and that the hospital take steps to preserve the evidence. The hospital wrote back that the equipment had not been preserved.

Although the patient did not claim to have grounds for a medical negligence suit against the hospital, the patient did sue the hospital for depriving the patient of the means to pursue a products liability suit by failing to preserve the evidence. The court upheld the suit, ruling that spoliation of the evidence is an independent basis for a suit, apart from medical negligence. The court also said in passing that spoliation of the evidence could be used in a medical negligence suit as proof a healthcare provider believes malpractice has occurred. **Temple Community Hospital vs. Superior Court**, 51 Cal. Rptr. 2d 57 (Cal. App., 1996).

The physical evidence of an adverse patient-care event cannot be altered or disposed of after the fact.

Healthcare providers must preserve the evidence a patient will need for a products liability case against a medical device manufacturer, or face a patient's lawsuit.

Destruction of the evidence of an adverse patient-care event can be the basis for a lawsuit against a healthcare provider, even if there is no professional negligence claim against the healthcare provider under the circumstances.

If there is a negligence claim against the provider, spoliation of the evidence increases the likelihood the patient will succeed with a lawsuit. Destruction of the records or physical evidence needed to assert a medical negligence claim can be used to prove the healthcare provider believes that negligence was committed, forcing the provider to have to try prove there was no negligence.

COURT OF APPEALS OF CALIFORNIA, 1996.

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