

## Civil Rights: Circulating Nurse Violated Sponge-Count Rules, Discrimination Lawsuit Dismissed.

A registered nurse of Asian Indian descent was fired after a laparotomy sponge was left inside a patient on whose case she circulated and had to be removed with a second surgery.

The scrub nurse on the same case, a Caucasian, was reprimanded but was not fired.

Unlike the circulating nurse, the scrub nurse was willing to take responsibility. She admitted she and the circulating nurse did not follow the hospital's protocol for the scrub nurse and the circulating nurse to do their sponge counts. Both the scrub and the circulating nurse were to direct their attention and watch as the circulating nurse handled each sponge individually that was removed from the sterile field and counted each sponge aloud.

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***The Asian Indian circulating nurse refused to take responsibility for the incident and had three prior OR episodes which threatened patient safety.***

***The Caucasian scrub nurse was willing to take responsibility for the incident and had no prior infractions.***

***The two nurses were indeed treated differently, but not because of race.***

UNITED STATES DISTRICT COURT  
NEW YORK  
March 6, 2006

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The court pointed out that neither the scrub nurse or the circulating nurse were in the room at the start of the case, a fact that made it all the more essential to follow sponge-count protocols rigorously for the second and last counts on the case which they performed.

With valid grounds to fire the nurse notwithstanding her minority status, her discrimination lawsuit had to be dismissed. A perioperative nurse cannot claim to be doing the job satisfactorily, a prerequisite to filing a discrimination lawsuit, if a sponge is left inside a patient and that error can be traced to the nurse's failure to follow the hospital's protocols for sponge counts, the court said. D'Cunha v. New York Hosp. Med. Center of Queens, 2006 WL 544470 (E.D.N.Y., March 6, 2006).