

# Evidence Missing From The Chart: Judge Should Have Told The Jury They Could Draw Their Own Conclusions.

The otherwise healthy thirty-seven year old patient went to post-anesthesia recovery after routine surgery to remove his cancerous thyroid and certain lymph nodes from his neck.

After two hours in post-anesthesia recovery, where he had an oxygen mask and pulse oximeter, he was transferred to an acute-care floor designated as the pediatric unit, without his oxygen or the oximeter. He coded and died after two and one half hours on the pediatric unit.

His post-mortem showed he died from respiratory failure from post-surgical neck swelling that compromised his airway.

The family's attorney's theory was that the nursing staff on the pediatric unit were unfamiliar with care of adult post-thyroidectomy patients, failed to appreciate the possibility that hematoma at the surgical site could obstruct his breathing, failed to monitor him closely and failed to have an adult tracheostomy kit at the bedside as a routine precaution in case there happened to be a code.

## Crucial Evidence Was Not In The Chart

Lab results for the blood gases drawn during the code were simply gone from the chart, as was his vital signs nursing flow sheet from the pediatric floor.

Both pieces of documentation, the family's lawyer argued, could have supported the lawyer's case of inadequate monitoring of his respiratory status and could have rebutted the hospital's theory of a sudden, unexplained heart attack.

The Court of Appeals of South Carolina ruled that the trial court judge should have instructed the jury, as the family's lawyer insisted, that they were allowed to draw negative inferences against the hospital based on the fact that crucial evidence was missing. Stokes v. Spartanburg Regional Med. Ctr., \_\_\_ S.E. 2d \_\_\_, 2005 WL 3692613 (S.C. App., January 23, 2006).

***When a healthcare provider loses or destroys evidence that is crucial to a patient's ability to sue for malpractice, the jury is allowed to draw its own conclusions whether the evidence would have helped the patient and hurt the provider.***

***The patient's lawyer has the right to ask the judge to instruct the jury that the healthcare provider must come up with a satisfactory explanation why the crucial evidence is missing. If the provider's explanation is unsatisfactory, the jury is allowed to conclude that the evidence would have been damaging to the healthcare provider's position in the lawsuit.***

***In this case the judge was wrong to ignore the legal principle of spoliation of the evidence and to refuse to give such an instruction.***

***The jury's verdict exonerating the hospital for the patient's death must be overturned and a new trial will be necessary in which the jury will be given proper instructions.***

COURT OF APPEALS  
OF SOUTH CAROLINA  
January 23, 2006