# Fire In The O.R.: No Attempt To Hide The Facts, Court Says.

The patient was having surgery to remove moles from her back and left eyebrow. She was under light sedation with oxygen running.

When the plastic surgeon activated the Bovie as he started to work on the eyebrow the spark caused a flash fire that was complicated by the oxygen that was running. The surgical team reacted quickly and put out the fire within seconds.

The patient had second-degree burns on the side of her face that left scars and still has problems with the eye.

***The plastic surgeon did not try to hide from the patient the fact that there was a fire. He got an immediate consult with a more experienced plastic surgeon and an ophthalmologist.***

COURT OF APPEALS OF OHIO
December 8, 2011

The Court of Appeals of Ohio stated that a patient can sue a healthcare provider for additional damages for fraudulent concealment on top of medical malpractice.

Nevertheless the Court disallowed $425,000 awarded by the jury for fraudulent concealment in addition to $871,359 awarded from the plastic surgeon for malpractice. The jury ruled the nurse anesthetist was not liable.

After the fire the patient's caregivers did what was required of them. They informed the patient that there was a fire and that she was burned by the fire, detailed the injuries caused by the fire and recommended appropriate treatment.

There was no obligation to admit fault in effect by going over the details of how the fire started, that is, no obligation to delve into the appropriateness of using the Bovie in close proximity with an oxygen source. **Wargo v. Susan White, 2011 WL 6152967 (Ohio App., December 8, 2011).**

# Latex Allergy: Nurses Held To Blame For Death From Anaphylaxis.

A twenty-nine year-old patient died in the hospital in 2000 from an anaphylactic reaction to latex products used during her gynecological surgery.

***The jury found the hospital liable for the patient's death due to the negligence of the hospital's nurses.***

***The jury exonerated the doctors from liability.***

COURT OF APPEALS OF MISSISSIPPI
December 13, 2011

The Court of Appeals of Mississippi approved a $4,691,000 verdict which expressly faulted the hospital's nurses for failing to follow the hospital's guidelines for admission screening of patients for potential latex allergy.

The adequacy of the hospital's guidelines was not called into question.

**Latex Screening**
**Nursing Responsibility**

The Court ruled it is a nursing responsibility to screen patients for latex allergy at the time of admission, assuming the hospital uses latex gloves or other products which pose a risk of allergic reactions.

If the patient has risk factors for latex allergy the nurses must communicate that fact to the treating physicians.

This hospital's policies called for the assessment form to be filled out completely, an allergy-alert sticker placed on the front of the patient's chart, signs hung on the door to the patient's room and central supply, purchasing and dietary notified.

The nurses neglected to ask the basic direct questions on the admission assessment form about prior experience with latex and less direct questions about certain food allergies that are common in latex-sensitive individuals and failed to probe for any and all prior allergic reactions in healthcare settings. **Mississippi Baptist v. Kelly, __ So. 3d __, 2011 WL 6157656 (Miss. App., December 13, 2011).**

# Lifting Restriction: Nurse Not Entitled To Reasonable Accommodation.

An LPN experienced an aggravation of an old on-the-job shoulder and neck injury making it impossible for him to lift more than twenty pounds on a regular basis. This restriction significantly limited his ability to perform patient-care tasks.

After continuing to work for several years with his restriction he had to retire when a scheduling change required him to work weekends and holidays when other nursing personnel would not be available to do all the heavy lifting for him.

***The accommodation sought by the nurse, permanent light-duty status, would put the burden on other nurses to do all the heavy lifting and perform other physical tasks he is not able to perform.***

***A person who seeks an accommodation that excuses him or her from the essential functions of the job is not a qualified individual with a disability.***

UNITED STATES DISTRICT COURT
MASSACHUSETTS
December 9, 2011

The US District Court for the District of Massachusetts found no disability discrimination and dismissed his case.

The courts have found no discrimination in other cases where a disabled employee was given light duty for a extended period time, an accommodation which the employer had no duty to provide in the first place which is eventually taken away.

The hospital in this case had no obligation to continue to ignore the essential functions of the job, repeated heavy lifting of patients by a staff nurse, even if that was done for a certain period of time. **Bourque v. Shinseki, 2011 WL 6148430 (D. Mass., December 9, 2011).**



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