

Labor And Delivery: Patient Not Required To Prove How Burn Injury Occurred During Epidural, Lawsuit Goes Forward Under *Res Ipsa Loquitur*.

A patient sued the hospital and her physician for malpractice for a burn injury she sustained while hospitalized to give birth.

The hospital and the physician asked the court to dismiss the case because the patient was unable to specify how the burn injury happened or which of her caregivers, the nurses, staff physicians, her physician, etc., was actually to blame.

The patient's lawyers countered by arguing for application of the legal rule of *res ipsa loquitur*, a phrase from the Latin meaning, "The thing speaks for itself."

The New York Supreme Court, Appellate Division, agreed with the patient's lawyers and allowed the case to go forward.

Speculation As To Cause of Injury

The patient discovered the burn injury only after awakening from a sedative-induced sleep. The injury apparently occurred while she was numbed from the waist down by an epidural anesthetic.

The patient's lawyers speculated it was probably the overhead examination lamp in the labor and delivery examination room that caused the burn injury, but that was only speculation.

Infliction of a blistering burn on the inner portion of the patient's right knee during or shortly after a vaginal examination and administration of an epidural anesthetic is an event that a jury could reasonably infer would not happen in the absence of negligence by the patient's caregivers.

Further, any potential cause of the burn was within the exclusive control of the defendant caregivers.

The defendants together exercised concurrent control over the examination room and the medical equipment.

The patient was unconscious from her medications and could not identify the person who caused her injury.

The doctrine of res ipsa loquitur applies here.

NEW YORK SUPREME COURT
APPELLATE DIVISION
November 17, 2003

Numerous employees of the hospital as well as independent-contractor physicians were in and out of the room during the two hours the patient was asleep, making it virtually impossible to determine exactly who let the lamp touch her or come close to her or left it there, if the lamp was what caused the injury.

Res Ipsa Loquitur

The courts apply the rule of *res ipsa loquitur* to give an injured patient/victim the benefit of the doubt in these situations. The classic case for *res ipsa loquitur* is a general-anesthetic patient in a hospital operating room who awakes to find he or she has been injured but with no way to prove exactly what happened, how it happened or who did it, things a plaintiff is normally expected to prove in a civil negligence lawsuit.

The court ruled that a hospital patient would normally not be injured in this manner without someone committing negligence.

The whole scenario was exclusively within the control of the defendants collectively during the whole time the injury could have occurred.

No third parties or the patient herself could have caused or contributed to it.

The caregivers will have to sort it out or all will face joint liability. **Rosales-Rosario v. Brookdale University Hospital and Medical Center**, __ N.Y.S.2d __, 2003 N.Y. Slip Op. 18447, 2003 22717881 (N.Y. App., November 17, 2003).

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