

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Operating Room: Circulating Nurse Should Have Examined Specimen, Lawsuit Upheld.

The patient came to the emergency room with abdominal pain and was diagnosed with acute appendicitis.

He had a laparoscopic appendectomy that same day and was discharged home the next day.

One year later he was admitted to a different hospital through its emergency room for abdominal pain and was again diagnosed with appendicitis.

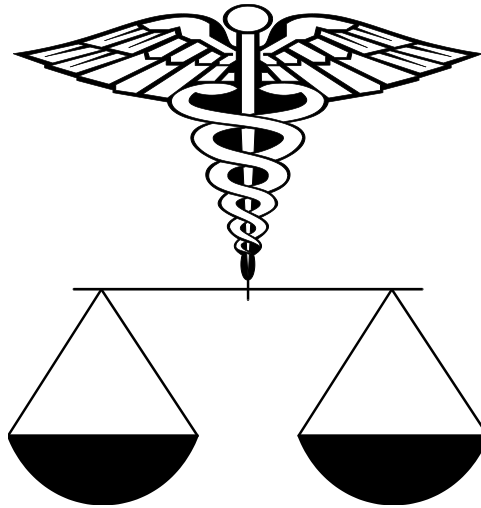
A 4.2 cm section of appendix was removed during a second procedure.

The patient sued the first hospital for negligence by the circulating nurse and negligence in the hiring of the surgeon who did his first procedure.

The hospital petitioned for dismissal of the lawsuit on the grounds that the reports filed along with the lawsuit containing the opinions of the patient's proposed medical and nursing experts did not state sufficient grounds for finding the hospital negligent.

The Court of Appeals of Texas disagreed with the hospital and ruled there were grounds for the lawsuit, assuming the facts alleged in the lawsuit could be proven to a jury's satisfaction.

The patient's medical expert's opinion was very straightforward. The standard of care for a surgeon doing an appendectomy requires the surgeon to remove the entire appendix. Failing to do so is negligence.



The standard of care required the O.R. nurse to examine the specimen that was removed to verify that it was the entire appendix.

If it was not, the nurse needed to bring that fact to the surgeon's attention.

Because the appendix was not fully removed, bacteria entered the remaining portion and it became infected.

COURT OF APPEALS OF TEXAS
June 13, 2013

Patient's Nursing Expert's Opinion

The patient's nursing expert's opinion pointed directly to the circulating nurse in the first procedure.

The standard of care for the hospital required the circulating nurse to examine the specimen that was removed from the patient to make certain that the entire appendix was taken out.

If it appeared to the circulating nurse that the entire appendix was not removed, the standard of care required the circulating nurse to advocate for the patient by bringing that fact to the surgeon's attention.

No Unauthorized Practice Of Medicine

The Court was not swayed by the hospital's argument in its defense that calling upon a nurse to examine the appendix would have required her to step out of the nurse's legal role defined by the state's nurse practice act and to engage in illegal unauthorized practice of medicine.

According to the Court, a circulating nurse is expected have sufficient judgment and skill based on knowledge and application of principles of biology to recognize whether it was or was not the whole appendix, which is not outside the realm of professional nursing.

San Jacinto Methodist v. McCoy, 2013 WL 3009318 (Tex. App., June 13, 2013).

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