

## Operating Room: Court Sees Liability For Radial Nerve Injury.

For her hysterectomy the patient lay supine on the operating table with her arms out from her side, palms up, supported by padded arm boards attached to the operating table, with her arms secured to the arm boards by straps.

About an hour into the two-hour procedure the anesthesiologist noticed that the patient's right arm was dangling toward the floor because the arm board had become detached from the table.

The anesthesiologist did not know how or when the arm board became detached, but he reattached the arm board to the operating table and made note of the incident in his record of the case.

When she awoke the patient complained of pain in her right arm. The anesthesiologist explained that the arm board had become detached and that that could have caused nerve damage in her arm.

A neurologist saw the patient in the hospital and diagnosed a possible radial nerve injury. Two months after discharge an EMG was normal. Thirteen months later the patient was still reporting some loss of sensation in the tip of her right thumb.

### Court Sees Grounds

#### For Lawsuit Against Hospital

The Court of Appeals of Indiana saw grounds for the patient's lawsuit which named the hospital and the anesthesiologist, but not the surgeon, as defendants.

The Court declined to sort out the finger-pointing between the nurses, the anesthesiologist and the surgeon.

According to the Court, what happened was not something for which one defendant would be solely responsible.

Instead, what happened was the result of multiple negligent omissions by multiple individuals who all failed to notice that the patient's arm was dangling out of proper position for a long enough interval of time for an injury to result.

Even if the surgeon did improperly set the arm board in place, according to the Court, that fact would not absolve the hospital's perioperative nurses or the anesthesiologist from liability. They had independent duties to monitor the positioning of the patient's arm throughout the surgery. **Thomson v. St. Joseph**, \_\_ N.E. 3d \_\_, 2015 WL 520843 (Ind. App., February 9, 2015).

***The patient's injury was not the result of just one act, the initial positioning of her arm on the arm board and the initial attachment of the board to the operating table, for which only one individual would be liable.***

***Rather, what happened here was potentially the result of multiple acts of negligence by multiple individuals who failed to notice the patient's arm dangling out of position for a period of time long enough to cause a radial nerve injury.***

***The patient does not need expert testimony to prove her case. It is not a fatal flaw that her expert, a nurse, is not a proper expert on the medical standard of care for a surgeon or an anesthesiologist.***

***The legal rule of res ipsa loquitur allows the judge or the jury to draw an inference of negligence from the mere happening of an incident like this one.***

***Common sense would tell any lay jury member that a patient's arm should not be left dangling toward the floor during surgery.***

***A juror would not have to be told the exact mechanics of arm positioning for surgery or how an arm board is supposed to be attached to a surgical bed.***

COURT OF APPEALS OF INDIANA  
February 9, 2015

## Operating Room: Nurses Cannot Point Finger At The Surgeon.

As a result of an instrument being left inside his body during surgery, the patient obtained a jury verdict of \$115,000 against the hospital. The surgeon had settled out of the case before trial.

The type of instrument and the amount of the surgeon's settlement were not reported in the court record.

***The nurses cannot testify that the surgeon was the one who was at fault.***

***A nurse is not an expert on the standard of care for a physician, and the nurses had no direct recollection of what happened in this particular case.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
February 6, 2015

The New York Supreme Court, Appellate Division, upheld the jury's verdict and dismissed the hospital's appeal.

In retained-instrument cases the courts look to the legal rule of *res ipsa loquitur*, Latin for, "It speaks for itself."

That legal rule is based on the fact that the surgical personnel collectively have exclusive control of what happens in the operating room. The patient is unconscious and helpless and has no involvement. Nor are any outside parties involved, just the surgical personnel.

The law allows the jury to infer that negligence is the reason that an instrument, sponge, needle or other object was left inside the patient's body, from the mere fact that it happened.

Under this scenario the surgical personnel and their employer or employers are all usually held liable. The patient does not have to prove which individual person did or failed to do what, which the law sees as unnecessarily difficult for the patient. **Lauto v. Catholic Health**, \_\_ N.Y.S.2d \_\_, 2015 WL 505610 (N.Y. App., February 6, 2015).