

O.R.: Infection Had To Have Been Caused By Break In Sterile Technique.

After an earlier diskectomy the patient had to undergo an extensive cervical fusion surgery due to an infection which her physicians determined originated in the C4-C5 intervertebral space.

The MRI established that the patient's post-operative infection originated at C4-C5.

The only possible explanation is that a needle inserted during the procedure as a marker at C4-C5 was contaminated.

NEW YORK SUPREME COURT
APPELLATE DIVISION
January 20, 2009

The New York Supreme Court, Appellate Division, accepted medical testimony that the only possible cause for the infection was that a contaminated needle was used as a marker at that location during the procedure.

Patient Does Not Have To Prove How It Happened

The court went over the testimony of hospital personnel how non-sterile packaging is opened by the circulating nurse who delivers the instrument to the sterile scrub nurse who opens the sterile packaging inside and places the instrument on the sterile table for use by the surgeon.

There was nothing in that testimony even suggesting how this needle could have become contaminated.

However, the crucial point of evidence was expert medical testimony that there was no other explanation beside contamination to account for the result. Antoniatto v. Long Island Jewish Med. Ctr., __ N.Y.S. 2d __, 2009 WL 146581 (N.Y. App., January 20, 2009).