

## Weighted Vaginal Speculum Too Hot: Court Finds Physician And Hospital Each 50% At Fault.

The patient had two procedures under general anesthesia, a vaginal hysteroscopy with endometrial ablation and a laparoscopic cholecystostomy.

The first required the use of a weighted vaginal speculum. The blade goes in the vagina, and there is a weighted portion of the instrument that can rest against the inner surface of the buttocks.

The patient left the hospital with blistering in the crack of her buttocks consistent with the location of the weighted part of the speculum. The blistering progressed to third-degree burns that required surgery and two weeks additional hospitalization.

The patient sued.

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***After an instrument is autoclaved, it is the surgeon's and the surgical nurse's or surgical tech's responsibility to ensure that it has cooled sufficiently before being used.***

COURT OF APPEAL OF LOUISIANA, 2000.

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The Court of Appeal of Louisiana had to sift through a great deal of expert testimony. In the final analysis the court accepted the simple fact the patient's burns were located just where the weighted portion of the vaginal speculum would have been in contact with her skin.

The court also heard from the surgical tech on duty. She testified that no sterile speculum was on the storage shelf, so she got one from the instrument room, washed it and autoclaved it for ten minutes at 273°. Apparently the physician grasped it by the blade without checking to see that the weighted portion was still much too hot to use. Hoffman v. East Jefferson General Hospital, 778 So. 2d 33 (La. App., 2000).

## Private Duty Surgical Nurses: Case Against The Hospital Dismissed.

The patient had surgery for a temporomandibular joint disorder. A piece of gauze was left in her ear to prevent blood draining into the ear. That caused complications. The patient sued the surgeon and the hospital where the surgery was performed.

The Supreme Court of North Dakota saw grounds for a lawsuit against the surgeon. But the hospital was another story.

The hospital provided the operating room and provided a circulating nurse and a surgical technician, both hospital employees. However, the procedure was done entirely by the surgeon and the surgeon's private-duty surgical nurse. The surgeon and his nurse were not hospital employees.

The patient had no expert testimony how the legal standard of care required the hospital's own employees to do anything differently than they did.

The court was at a loss to see how the hospital's employees could have been at fault. Greenwood v. Paracelsus Health Care Corp., 622 N.W. 2d 195 (N.D., 2001).

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## Lay Midwifery: Court Upholds Nursing Board's Jurisdiction.

The Court of Appeals of Kentucky recently upheld a regulation of the state board of nursing effectively outlawing the practice of lay midwifery (by persons not in practice before 1975) and requiring all midwives to be licensed by the board of nursing as nurse midwives.

The court said the board's action was rationally related to the objective of promoting the health of mothers and infants. Watson v. Board of Nursing, 37 S.W. 3d 788 (Ky. App., 2000).

## Patient Leaves Office Drunk, Nurse Calls The Police: Court Looks At Basis For The Lawsuit.

The patient came to the doctor's office for follow-up of a chest xray. The patient apparently had a severe upper respiratory infection. He was taking Ativan and codeine and drank lots of cough syrup containing alcohol. He also had been drinking beverage alcohol earlier that day.

When he was ready to leave, the doctor told the office nurse to call the police and have them come and arrest him in his car as he left the clinic. The police were changing shifts and got there a little late, but they went and found him on the street and arrested him for drunk driving. He sued the doctor for medical malpractice.

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***The patient sued the doctor for malpractice for telling the nurse to phone the police after the patient left the doctor's office drunk.***

***The patient insisted on calling it malpractice, but it had nothing to do with malpractice.***

COURT OF APPEALS OF INDIANA, 2001.

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The Court of Appeals of Indiana threw out the case, with a note of caution.

There was no malpractice or breach of medical confidentiality. Malpractice was what the patient claimed in his lawsuit, so the lawsuit had to be dismissed.

### **Letting Patient Drive Home Drunk Question of Negligence Left Open**

However, the court said it would be negligent for a doctor or a nurse to let an obviously intoxicated patient try to drive home. Had the patient been injured and sued for that, he might have won. Thomas v. Deitsch, 743 N.E. 2d 1218 (Ind. App., 2001).