Surgical Nurses: Sponge Count Is Strictly Nurses' Responsibility, Court Rules.

The patient and her husband sued the surgeon and the hospital because a laparotomy sponge was left inside her after surgery to remove her gallbladder.

There was no question that one lap sponge had to be removed in a subsequent surgery and that it got there during the previous surgery. The only question for the Court of Appeals of Wisconsin was who was legally responsible.

This court rejects the idea the surgeon as "captain of the ship" in the operating room is responsible for the negligence of operating room personnel whom the surgeon has not selected and who are not employees of the surgeon.

COURT OF APPEALS OF WISCONSIN, 2000.

The court noted the circulating nurse by law is responsible for correct sponge, needle and instrument counts in the operating room. The hospital is responsible for any of its nurses' errors and omissions as the nurses' employer.

Hospital policy put responsibility squarely on the circulating nurse and the scrub nurse or scrub tech to insure correct counts in the operating room. Hospital policy did not impose that responsibility on the surgeon.

In this case the patient opted to sue the surgeon and the hospital but not the nurses. The court let the surgeon out of the case. The court rejected the idea the surgeon is vicariously responsible for others' negligence when the surgeon himself or herself has done nothing negligent. **Lewis v. Physicians Insurance Company of Wisconsin, 612 N.W. 2d 389 (Wis. App., 2000).**

Nurses Forcibly Catheterized Patient: Court Willing To Find Civil Rights Violation.

When acting in response to a request from a law enforcement officer, any physician, nurse, or medical technician who withdraws or otherwise obtains, in a medically accepted manner, a specimen of breath, blood, urine or other bodily substance and delivers it to a law enforcement officer shall be immune from civil or criminal liability for so acting, providing the skill and care exercised is that ordinarily required and exercised by others in the profession.

This immunity from a lawsuit applies also to the hospital or other medical facility where the specimen is obtained, provided the skill, care and facilities provided are comparable to what is ordinarily provided by medical facilities.

However, taking the specimen is a search and seizure under the Fourth Amendment.

Medical personnel must be cautious when a specimen is taken for a criminal prosecution rather than medical reasons, because Constitutional rights of privacy come into play.

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 2000.

A man was arrested on suspicion of driving a motor vehicle under the influence of an illegal controlled substance. The arresting officers took him to the hospital to have a blood sample drawn for use as evidence against him in court.

The Superior Court of New Jersey, Appellate Division, ruled the police were acting properly. They had probable cause and were authorized by law to require the arrested subject to produce a forensic blood sample to test for the presence of controlled substances in his body at the time of arrest.

At the hospital a blood sample was draw. However, the physician on duty told the police it was the policy of the hospital's lab only to test a blood sample for alcohol, and to test urine for other toxic substances such as illegal drugs.

The court noted it was the physician and not the police who initiated the idea of getting a urine sample. Strictly speaking the urine sample was not requested by a law enforcement officer as required by state law for the medical providers to be immune from a lawsuit by the subject.

Under orders from the physician the nurses had the man drink at least eight glasses of water, then taunted him with a urinary catheter to intimidate him into urinating voluntarily. Two minutes after the last glass of water, under the assumption he was intentionally refusing to urinate, the nurses had the police hold him down, literally kicking and screaming, while they catheterized him and got some urine.

The court had serious qualms whether this was a medically accepted manner to obtain a urine sample, regardless of the arrested subject's intent versus inability to urinate. The Appellate Division ruled the lower court was wrong to throw out the subject's lawsuit for battery, negligence and violation of his constitutional rights and said he was entitled to have a civil jury rule on his case against the physician, nurses and hospital. **Jiosi v. Township of Nutley, 753 A. 2d 132 (N.J. App., 2000).**