

## Post-Surgical Complications: Slow Response Raises Verdict.

After thyroid surgery the patient was moved from post-anesthesia recovery to a medical/surgical unit.

While the patient was still in the corridor on a gurney awaiting placement in a med/surg room the patient's adult daughter and sister could see she was uncomfortable. She was sweating. Her skin had turned grey. She could not speak and she made a gurgling sound when she breathed.

The family members had to prompt their loved one's caregivers to take necessary action. A nurse called in the rapid assessment team after the patient was in her room. A respiratory therapist from the team suctioned the patient. Suctioning provided some relief. The team left the room nine minutes after they arrived.

Soon the sister had to ask the respiratory therapist to come back to the room and suction the patient again.

A few minutes later the daughter had to ask the patient's nurse to call the surgeon because the patient's dire condition was not improving. The sister and daughter endured ten anxious minutes sitting with her waiting for the surgeon to arrive.

The surgeon came to the room, repositioned her, suctioned her and then took off the dressing to remove the sutures. At that point the patient stopped breathing. A full code was called twenty three minutes after the surgeon first arrived.

The patient sustained severe brain damage due to several minutes of asystole. She passed away in the ICU several days later after life support was withdrawn.

### Family Members Who Were Present Entitled to Damages For Their Own Emotional Distress

The California Court of Appeal ruled the sister and adult daughter were entitled to damages from the hospital for their own emotional distress.

Having to witness and endure the patient's caregivers' apparent lack of attention and urgency in responding to their loved one's life-threatening medical emergency was the telling factor for the jury in awarding damages for emotional distress in addition to statutory damages for wrongful death related to malpractice. **Keys v. Alta Bates**, 2015 WL 778322 (Cal. App., February 23, 2015).

***The patient's sister and an adult daughter were present when the patient started having trouble breathing after thyroid surgery and during the ensuing code.***

***The family members were very upset emotionally by the apparent lack of urgency the nurses, respiratory therapist and physician showed in responding to their requests that they do something immediately to help the patient who appeared to be in very serious distress.***

***In addition to \$1,000,000 for the sister and two adult daughters for malpractice, the jury awarded the sister and the one adult daughter who was present \$200,000 and \$170,000 for negligent infliction of emotional distress.***

***Throat hematoma is a common complication after thyroid surgery. There is no evidence this patient's post-operative hematoma itself resulted from sub-standard care.***

***Instead, the critical factors in this case were the failure of hospital personnel to realize the post-surgical patient had a compromised airway and their failure to intubate her promptly or take other steps to resolve her compromised airway.***

CALIFORNIA COURT OF APPEAL  
February 23, 2015

## Labor & Delivery: Hospital Ruled Liable For Nurse's Negligence.

The baby's skull was fractured during a cesarean delivery.

The injury apparently occurred when the obstetrician, at first unable to extract the baby through the surgical incision because the head was too deep in the birth canal, asked a nurse to insert her hand into the vagina and push the head up the canal.

The parents' lawsuit on behalf of the baby alleged the nurse was negligent for using such excessive manual force that she fractured the baby's skull.

The hospital countered the lawsuit by asking for summary dismissal on the grounds that the nurse, although a hospital employee, acted under the direction of an independent physician who was not a hospital employee.

***The hospital can be liable for the labor and delivery nurse's negligence even if the nurse acted under the direction of the obstetrician who was not a hospital employee.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
March 5, 2015

The New York Supreme Court, Appellate Division, accepted the parents' expert's opinion that it was appropriate for the nurse to perform this maneuver when ordered by the physician, but she needed to perform the maneuver in a gentle, non-traumatic fashion with due regard for its potential to cause injury.

The parents' expert went on to say that the nurse in fact used excessive force which was the cause of the child's cranial injuries.

The Court rejected the argument that the hospital was not liable for an act of a nurse employed by the hospital because she acted at the direction of an independent physician who was not a hospital employee. **Trifiletti v. Hee-Young**, \_\_ N.Y.S.3d \_\_, 2015 WL 919629 (N.Y. App., March 5, 2015).