



Medical Law Perspectives

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What Is Needed To Prove Malpractice for Injury from Unsterilized Medical Instruments?

Typically, medical records are not going to tell us whether or not the instrument that caused the plaintiff's injury was unsterilized.

To prove the case, first we have to establish that the plaintiff suffered the type of injury that would occur from an unsterilized instrument, which is primarily an infection. Second, we have to rule out other reasonable causes of the infection. Third, we have to obtain from the defendants, in addition to the medical records, their policies and procedures regarding sterilization. After we obtain their policies and procedures regarding sterilization, we have to depose those individuals who according to the policies and procedures would have been the individuals that would have sterilized the instrument that was implanted in the plaintiff. If we establish that policies and procedure were not followed, we are on the way to proving the case.

An additional fact that may help is if other patients undergoing the same procedure suffered a similar injury.

Unfortunately, it would be unlikely, and probably not very helpful, to examine the product or instrument itself to see if that product or instrument caused the injury because infection would have already occurred.

In a nutshell, you would have to circumstantially show that:

- The plaintiff suffered an injury
- The injury was the type of injury, namely an infection, that would occur from an unsterilized instrument
- The defendant had policies and procedures regarding instrument sterilization
- The sterilization policies and procedure were not followed with this particular plaintiff
- Other people also suffered similar injuries in the same context as the plaintiff

There are potentially two types of medical expert needed for this type of litigation:

- An individual who is familiar with the policies and procedures of institutions regarding the appropriate sterilization of medical instruments. Counsel will want to gather industry standards and guidelines and medical articles that would support the expert's testimony.
- A traditional doctor who can tell you that this type of infection was likely caused by an unsterilized instrument, and also be able to tell you why it is unlikely that the infection resulted from other causes.

The most difficult hurdle a plaintiff would face in these types of cases is ruling out other reasonable causes of the post-surgical procedure infection.

Everyone knows that infections can occur in the absence of negligence. But, in my opinion, this does not mean that negligence does not cause infections, meaning that, it is difficult to prove some infections are caused by poor sterilization or absent sterilization technique.

Steven M. Levin is co-founder and senior partner of **Levin & Perconti**. He is a nationally known attorney who has successfully represented clients in personal injury matters for over thirty years. He has obtained numerous multimillion-dollar verdicts and settlements for his clients in a variety of medical malpractice, nursing home, personal injury, and wrongful death cases.