

Retained Foreign Objects – Medical Negligence

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A retained foreign object is a surgical instrument that is accidentally left inside of the patient's body during surgery. These can include surgical instruments such as forceps or scalpels, clamps, needles, screws, sponges or anything else used by the surgeon during surgery.

Before and after the surgical procedure, it is the Standard of Care for the surgeon and the Hospital Operating Room Nursing Staff to carefully count all of the instruments and other items to ensure that nothing was left inside the patient during the surgery. These counts must be documented in the Hospital Chart. When a surgeon is finishing a surgical procedure, every foreign object used in the surgery must be taken out of the patient's body before the patient is "closed" again. If a surgical instrument is left inside of a patient's body, this in all instances is considered negligence and actually constitutes **Negligence Per Se**.

This duty applies to both the Surgeon and the Hospital Nurses.

Pursuant to § 766.102(3)(b), Florida Statutes, "the discovery of the presence of a foreign body, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or diagnostic procedures, shall be prima facie evidence of negligence on the part of the health care provider.

"Section 766.102(3)(b), Florida Statutes, sets forth the foreign-body presumption of negligence where "in a medical malpractice case involving a foreign body left inside a patient's body, the burden of proof shifts to the defendant to prove that no medical negligence occurred." *Dockswell v. Bethesda Mem'l Hosp., Inc.*, 210 So. 3d 1201, 1202 (Fla. 2017). The sole presence of a surgical instrument itself is enough to presume that negligence occurred, thus the term **Negligence Per Se**.

If you or a family member has undergone a surgical procedure wherein a foreign body was left behind, you likely are entitled to make a claim for damages. Please contact Bonner Law at [305-676-8800](tel:305-676-8800) for a free consultation. We have over 30 years of experience representing patients and healthcare providers in medical malpractice litigation.

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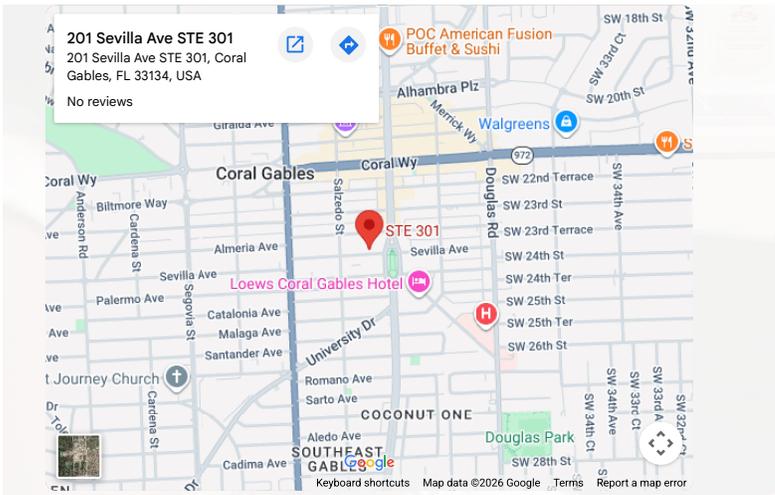
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