

## No Assistance To Bathroom: Court Looks For Malpractice.

The patient was in the hospital recovering from an angioplasty.

He began removing the monitor leads attached to his body because he wanted to get up and take a shower.

An aide came into the room and asked him what he was doing. He said he wanted to take a shower. The aide said she would come back shortly with some help. The patient sat and waited for the aide to return, but when the aide did not return he got up and went to the shower.

When he finished and tried to exit the shower he slipped and fell and broke his hip. He sued the hospital.

### ***Assessing a patient's need for assistance and assisting a patient involves an exercise of professional judgment by a nurses aide.***

COURT OF APPEAL OF LOUISIANA  
November 10, 2004

The Court of Appeal of Louisiana did not rule one way or the other whether the aide or the hospital were negligent under these circumstances.

The court ruled that assessing a patient's need for assistance and providing competent assistance to ambulate for activities of daily living requires the use of professional judgment.

The patient's case would be treated like a medical malpractice lawsuit which must go before a medical-review panel before a suit can be filed under state law.

Expert testimony will be required to establish the legal standard of care for a nurses aide in this situation and to establish how the aide breached the standard of care and harmed the patient.

This basically makes the case much more difficult for the patient to prove. Taylor v. Christus Health Southwestern Louisiana, 2004 WL 2536870 (La. App., November 10, 2004).

## Workers Comp: No Employer Retaliation Seen, Case Dismissed.

A hospital employee injured her back while ambulating a patient, attempting to prevent the patient from falling.

She notified her supervisor of the incident and went home. However, she did not call in absent the next few days. The hospital fired her for violation of the hospital's three-day no-call rule. She filed suit. The US District Court for the District of Oregon dismissed her case.

### ***To prevail on a claim of discrimination or retaliation for filing a workers compensation claim, an employee must show:***

- 1. The employee invoked the workers compensation system;***
- 2. The employee was discriminated against; and***
- 3. The employee was discriminated against because he or she invoked the workers compensation system.***

***The employee has to prove the connection by showing the employer had a discriminatory motive.***

UNITED STATES DISTRICT COURT  
OREGON  
November 4, 2004

The hospital acknowledged it is illegal to discriminate or retaliate against an employee who files a workers compensation claim. However, the hospital had always treated every employee the same who failed to call in absent for three days, whether the reason was an on-the-job injury or some other factor and always applied its abandonment-of-employment rule uniformly. Gallagher-Burnett v. Merle West Medical Center, 2004 WL 2486259 (D. Or., November 4, 2004).

## Latex Allergy: Nurse Exposed Before, Had Baseline Condition.

The nurse had had numerous job-related exposures to latex products which at one point had qualified her for a \$60,000 lump-sum workers compensation partial permanent disability award.

She continued to work in health care settings where latex exposure was unavoidable from gloves as well as from other environmental factors, such as the carpeting, to which the nurse had become sensitized.

After a latex-allergy flare-up which kept her off work for three days the nurse filed for workers compensation.

### ***The nurse suffered a work-related latex exposure while working at the nursing home.***

***However, no evidence was presented in this case that her chronic underlying latex allergy was related to her employment with her current employer.***

***This exacerbation lasted only a few days.***

SUPREME JUDICIAL COURT  
OF MAINE  
November 3, 2004

The Supreme Judicial Court of Maine sided with her current employer. That is, her brief flare-up was this employer's responsibility, but not her whole history of latex exposure and latex sensitization.

The nurse's condition returned to her baseline, non-symptomatic sensitivity to latex in three days. Three days workers compensation time loss pay was all this employer was required to pay. Sanders v. Seaside Nursing Home, 2004 WL 2452554 (Me., November 3, 2004).