

Operating Room: Nurses Ruled Not Liable For Peroneal Nerve Entrapment.

Following routine practice, the hospital's perioperative nursing staff placed a strap loosely across the patient's legs as she lay on the operating table before laparoscopic gallbladder surgery.

When she awoke she had numbness and tingling in one leg. The condition did not resolve and required neurosurgical operative exploration which revealed entrapment of the peroneal nerve by fibrous bands of connective tissue just inferior to the fibular head. The neurosurgeon successfully alleviated the condition.

The patient filed suit for nursing negligence against the hospital where she had the gallbladder surgery.

The patient has offered no expert testimony showing the defendants failed to live up to the standard of care and that that failure caused injury.

COURT OF APPEALS OF MISSISSIPPI
March 11, 2003

The Court of Appeals of Mississippi saw her legal case defective in two important respects and affirmed the dismissal entered by the lower court.

First, there was no evidence the perioperative nursing staff applied the restraint in a negligent manner.

Second, there was no medical testimony linking the nurses' actions to the injury. A physician testified extensively about the nature and extent of the fibrous entrapment, but could not say to a reasonable degree of medical certainty that it came from her being restrained.

An injurious condition surfacing after a medical intervention does not prove there was negligence. ***Powell v. Methodist Health Care-Jackson Hospitals***, __ So. 2d __, 2003 WL 943842 (Miss. App., March 11, 2003).

Back Condition: Prolonged Standing/Lifting Restriction, Court Says Nurse Cannot Sue For Disability Discrimination.

An employer cannot discharge an employee for a disability that is unrelated to the employee's ability to perform the employee's particular job or position.

To sue for disability discrimination an employee must be able to prove:

- 1. He or she has a disability as defined by law;***
- 2. The disability is unrelated to his or her ability to perform the job in question;***
- 3. He or she has been the victim of discrimination related to the disability.***

That being said, however, in this case it is not relevant or material whether the nurse has a legal disability from her back condition which makes her unable to stand on her feet for prolonged periods, which prevents heavy lifting, and which prevents her from taking on-call duty in the operating room.

These are all essential functions of an operating-room nurse's position which she cannot perform with or without reasonable accommodation.

COURT OF APPEALS OF MICHIGAN
UNPUBLISHED OPINION
February 21, 2003

A nurse was employed as a surgical tech in the hospital's operating room.

Because of a back condition which precluded her from prolonged standing and any heavy lifting she was assigned to the scope room where she could sit most of the time and had to do no heavy lifting.

In addition, she was not required to take on-call duty when emergency cases or scheduling problems required the staff to work beyond their assigned shifts.

Co-worker complaints caused the hospital to require all O.R. staff to be available for extra duty on call, whether or not they had medical restrictions. All staff accepted the change except the nurse in question. She was terminated and sued for disability discrimination.

Ability To Work On-Call Essential Function of the Position

The Court of Appeals of Michigan, in an unpublished opinion, ruled that the ability to take on-call work is an essential function of a surgical nurse's job, or, looking at it from another angle, that shifting the burden to others to take more on-call duty than their shares would not be a reasonable accommodation.

The court did not rule one way or the other whether the inability to stand for prolonged periods or an inability to do heavy lifting represents a substantial limitation on a major life activity, that being the touchstone for classifying a physical or mental condition as a legal disability.

The court fast-forwarded to the issue of the essential functions of the job. Even if the nurse's back condition was a legal disability, she could not perform the essential functions of her job and no accommodation in the form of shifting extra duties to her co-workers would be considered reasonable. ***Moschke v. Memorial Medical Center of West Michigan***, 2003 WL 462374 (Mich. App., February 21, 2003).