

Worker's Comp: On-Call Employees May Be Covered.

As a general rule employees are not eligible for worker's compensation benefits for injuries received while commuting to and from work, before they arrive on their employers' premises and after they leave the premises.

In a recent case the Supreme Court of Tennessee ruled that an exception to the general rule would be made for a healthcare employee who was injured in a motor vehicle accident while driving to work from home after being called in when he was on call at the hospital.

As an employee on call the Court considered him essentially to be already working rather than going to work when the accident happened.

The Tennessee Court cautioned that this employee-friendly exception to the general rule is not recognized in all US jurisdictions.

Some states do not recognize the exception in any form. In some states it depends on whether the employee was being fully or partially compensated when on on-call status, that is, while travelling while being compensated the employee could be considered on the job. Shannon v. Roane Med. Ctr., 2013 WL 1003473 (Tenn., March 13, 2013).

Battery: Nurse's Lawsuit Against Doctor Dismissed.

Battery is the legal term for the victim's right to sue for intentional infliction of injury by another person or for any non-consensual touching of the victim's person. Consent is a defense to civil liability for battery.

In a recent case the Supreme Court of Nebraska looked carefully at the facts and ruled that no battery occurred when several nurses and doctors were joking around in a lighthearted manner and one of the doctors tapped the nurse on the back of the neck with his hand.

The doctor did it intentionally, but it was basically a gesture of familiarity and there was no intent on his part to inflict any injury.

It came to light that the same thing had happened before while the same doctors and nurses were joking around, and the nurse did not complain. That tended to show that the nurse had communicated implied consent.

It was also questionable whether the nurse had actually sustained the injuries she claimed in the lawsuit, having a history of medical issues with neck pain. Wulf v. Kunnath, ___ N.W. 2d ___, 2013 WL 845789 (Neb., March 8, 2013).

Arbitration: Family Member Had No Authority To Sign, Court Finds Arbitration Agreement Invalid.

The resident's sister signed all the nursing home's admission papers, including the arbitration agreement.

After his death the sister got herself appointed personal representative of his probate estate and filed a lawsuit against the nursing home for negligence which allegedly caused his death.

The nursing home filed papers with the court to dismiss the court case and have the matter decided not in court but in an arbitration hearing, pursuant to the arbitration agreement.

The Supreme Court of Mississippi agreed with the resident's sister that arbitration was not appropriate because she did not have legal authority to agree to arbitration on her brother's behalf.

The sister had never been named as surrogate healthcare decision maker for the patient in a durable power of attor-

Arbitration is only appropriate if there is a valid arbitration agreement.

An arbitration agreement is not valid if the person who signed it, albeit a close family member, had no authority to sign.

Authority can come from a durable power of attorney signed by the patient or from the patient through words or actions appointing the family member as his or her agent.

SUPREME COURT OF MISSISSIPPI
March 21, 2013

ney or any other legal document signed by the resident ahead of time in accordance with state law.

There was no medical evidence that the patient lacked the mental capacity to manage his own affairs or to enter into a binding legal contract on his own when his sister signed the papers for him.

There was also no evidence that the patient communicated through his own words or actions any intent to appoint his sister as his agent for the purpose of signing legal papers for him.

Arbitration is a method of alternative resolution of private civil disputes that is highly favored by the courts. The courts are required to uphold it, but if and only if the patient or someone with authority agreed to arbitration. GGNSC v. Johnson, ___ So. 3d ___, 2013 WL 1150193 (Miss., March 21, 2013).