

Insulin-Dependent Diabetes: Court Dismisses Non-Licensed Aide's Discrimination Lawsuit.

The Court of Special Appeals of Maryland recently decided a case that points out the difficulties nurses can face when having to supervise a subordinate who has a disability or a condition which a court might later deem a disability in a disability-discrimination lawsuit.

On the one hand qualified individuals with disabilities have the right to work in their chosen professions free from the effects of prejudicial stereotypes. The Americans With Disabilities Act, the Rehabilitation Act of 1973 and anti-discrimination laws in every state strongly uphold that fundamental social policy.

On the other hand many healthcare facilities have special missions which require their employees to possess and display very special qualities, or face correction, discipline or, ultimately, dismissal.

The facility in this case cared for adolescents with impulsivity disorders, severe disturbances in interpersonal relations and behavior, sexual identity problems, aggressiveness and the aftereffects of physical and emotional abuse.

The court made the point these children are prone to behaving in ways that can result in serious harm to themselves, to other children and to staff. Thus, according to the court, it is imperative they be continually supervised by staff members who exercise sound judgment.

The director of nursing interviewed, hired, evaluated and made personnel recommendations for therapeutic aides at the facility. One director of nursing hired the aide in question, but most of the events involved her successor.

Starting when he took over the position the successor director of nursing was concerned about the aide's job performance, but he wanted to work with her and twice recommended her six-month probation be continued another six months.

The aide, it was felt, was identifying with her patients and thus lacked the professional objectivity she needed to look at their behavior realistically and the clinical detachment she needed to act effectively as an adult authority figure.

The therapeutic aide in this case failed to meet her employer's legitimate job performance expectations.

She was hired to work with emotionally and mentally disturbed adolescents.

Her job required her to exercise good judgment.

When disagreements arose over objectives and policies she had to yield to the seasoned perspectives of those who supervised her, including the medical director who was a board-certified psychiatrist, and the director of nursing who was a registered nurse with a master's degree in psychiatric nursing.

To decide this case the court did not rule whether insulin-dependent diabetes is a disability. The defendant facility conceded it is, but that was only for purposes of argument and is not binding.

Even if her diabetes was a disability, her performance problems had nothing directly to do with her diabetes, and even if they did, her performance problems were serious enough to justify not re-extending her probationary period another time in the hope she could change.

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This caused an ongoing problem getting the more willful children to cooperate with tasks that needed to be completed as part of the therapeutic regimen.

The aide also had the children participate in play that was inappropriate for children with sexual and physical abuse issues, such as tying children up or together with ropes and having them struggle to get loose and having children crawl through others' legs blindfolded.

Children were taken on an outing to see an excessively violent movie that also contained language considered inappropriate for immature viewers.

Very frightening was the fact that the aide twice lost consciousness while driving children in a state-owned vehicle. Once it resulted in a minor traffic collision.

It was problematic in two ways. Obviously it compromised the children's safety. And there was no medical corroboration either incident was related to the aide's diabetic condition as anyone would have suspected.

In any case, the director of nursing, the medical director and the personnel director finally concurred the aide's probation should not be re-extended. She was in effect terminated for poor job performance.

Soon afterward she was hospitalized for complications of diabetes and died. The personal representative of her probate estate sued for disability discrimination.

The court dismissed the lawsuit. The court did not rule whether diabetes is a disability. Other courts have decided that issue case-by-case, based on the severity of the effects of the illness on the individual in question, keeping in mind the person still has to be able to meet the essential functions of his or her job to be a qualified individual with a disability.

Whether or not she was disabled there were legitimate reasons this aide was unqualified to work with the clients her employer served, even with every legitimate effort having been made to correct her deficiencies. The clients' needs come first. **Nerenberg v. RICA of Southern Maryland**, 750 A. 2d 655 (Md. App., 2000).