Disability Discrimination: Employer Can Take Physician's Restrictions At Face Value.

A staff nurse in the hospital's emergency department got a note from her doctor that for six weeks she was not able to lift more than ten pounds with her left arm.

The hospital was able and willing to accommodate that restriction and she stayed on the job.

After six weeks the occupational health nurse asked her to update her medical status by having her doctor complete a new Physical Capacities Form.

The nurse's doctor's physician's assistant checked off boxes on the form indicating no lifting or carrying zero to twenty pounds, no pushing or pulling, no climbing ladders and no stretching or working above the shoulders.

The occupational health nurse exchanged emails with the emergency room clinical director and, after consulting with higher-ups in the human resources department, they decided to remove the nurse from the work schedule.

Months later the nurse's attorney advised them that all her medical restrictions were gone. They advised the attorney that his client could return to work, but the nurse was never heard from again, until she sued for disability discrimination.

No Disability Discrimination

The US Court of Appeals for the Fourth Circuit (Virginia) dismissed the nurse's case.

The nurse herself admitted that the restrictions ostensibly imposed by her doctor's physician's assistant meant she could not fulfill the essential functions of a hospital emergency department staff nurse.

The Court ruled, therefore, that she was not a qualified individual with a disability and had no right to sue for disability discrimination.

The Court rejected the nurse's argument that the Physical Capacities Form was in fact wrong or at least open to an interpretation in line with the restriction the hospital had earlier been willing to accommodate. The employer is entitled to take what the doctor says at face value. **Wulff v. Sentara Healthcare, 2013 WL 781958 (4th Cir., March 4, 2013).**

The nurse's doctor's physician's assistant checked the box on the hospital's Physical Capacities Form indicating "No lifting/ carrying 0-20 lbs."

The nurse argued that could have meant she was still capable of lifting and carrying up to ten pounds, a restriction the hospital had been willing to accommodate, while only lifting and carrying twenty pounds was out of the question.

However, the nurse had the completed form in her possession for more than a week before she turned it in to the hospital's occupational health nurse.

She could have gone back to her doctor or to the physician's assistant and had it changed or had explanatory comments added.

There was no reasonable accommodation that would have allowed the nurse to continue to work as a nurse in the hospital's emergency department without the ability to do any lifting whatsoever, and she admitted that herself in her own testimony in the case.

Lifting and carrying are essential functions of a staff nurse's job.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
March 4, 2013

Adhesive Tape Allergy: Court Finds Nurses At Fault.

The patient sued her obstetrician over an allergic reaction to adhesive tape she suffered during her hospitalization for delivery of her third child, her second delivered by cesarean section.

The same obstetrician had handled her previous pregnancies and had done her prior cesarean. During his prior treatment he had not used adhesive tape but had used paper tape instead, being aware at that time of her allergy to adhesive tape.

The obstetrician's defense to this lawsuit was that it was the hospital's nurses' responsibility to inquire as to a patient's allergies and to note that information in the chart so that it will be accessible to the treating physician.

The jury was given instructions by the judge that they could consider the negligence of the hospital's nurses as the cause of the patient's injury, rather than negligence by the treating physician.

APPELLATE COURT OF ILLINOIS
March 7, 2013

The jury accepted the obstetrician's defense that it was the nurses' fault, not his, that he used adhesive tape to which the patient was allergic.

The Appellate Court of Illinois pointed to expert testimony that it is a nursing responsibility to ascertain and document the patient's allergies that are pertinent to the proposed treatment.

The nurses were not relieved of their legal responsibility by the fact it was clearly documented many places in the patient's prior treatment records from the same obstetrician at the same hospital that she was allergic to adhesive tape.

The nurses themselves used paper tape rather than adhesive tape because they were aware of the problem. **Myers v. Manas, 2013 WL 860063 (Ill. App., March 7, 2013).**