

## Epileptic Nurse: Court Says Employer Reasonably Accommodated Nurse's Disability.

A registered nurse worked for a private corporation with the contract to provide twenty-four hour seven-day nurse coverage at a state prison.

The nurse had a grand-mal epileptic seizure off the job and called in sick for the day. The next day she went to work and requested for the future that her hours be restricted to the day shift. She was told to get a note from her physician.

Her physician obtained an EEG which confirmed the medical diagnosis of seizure disorder. He prepared a letter to the corporation's human resources director pointing to the diagnosis as the basis for restricting the nurse to five daytime shifts per week of no more than eight and one-half hours per shift.

The human resources director remarked she thought the nurse was using her medical situation to obtain preferential treatment in her work shift assignments.

### Medical Restrictions Honored

Nevertheless, the human resources director ordered the nursing supervisors to do as the doctor ordered. The nurse got her day shifts but then experienced hostility from her co-workers. Rather than discuss that issue with her superiors she abruptly quit and sued for disability discrimination.

The US District Court for the District of Kansas dismissed her lawsuit. First, the nurse did receive the accommodation she requested. Second, the nurse failed to participate in the interactive process with her superiors to attempt to resolve the issue of co-worker hostility.

The Americans With Disabilities Act requires an employer to initiate an interactive process with a disabled employee to determine how the employee's needs can be met. If the employee unreasonably fails to participate in the interactive process the right to sue for discrimination is forfeited. **Williams v. Prison Health Services, Inc.**, 159 F. Supp. 2d 1301 (D. Kan., 2001).

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***A disabled employee is entitled to reasonable accommodation that will make the employee qualified to work, unless the employer can show that the requested accommodation would impose an undue hardship on the employer.***

***The Americans With Disabilities Act says that reasonable accommodation may include job restructuring, part-time or modified work schedules or reassignment to a vacant position, assuming there is no undue hardship to the employer.***

***Federal regulations say the employer must initiate an informal interactive communication process with a disabled employee to identify the employee's precise limitations from the disability and how those limitations can possibly be accommodated.***

***If the employer seeks in good faith to participate in the interactive communication process, while the employee unreasonably refuses, the employee cannot sue for discrimination.***

UNITED STATES DISTRICT COURT,  
KANSAS, 2001.

## Handwashing: New Guideline From CDC.

On November 9, 2001 the Centers for Disease Control and Prevention (CDC) issued a Draft Guideline for Hand Hygiene in Healthcare Settings. It stresses the use of alcohol-based anti-bacterial hand rubs.

Before issuing a new regulation in final form a Federal agency must first publish a draft of the proposed regulation and invite public comment. The CDC is accepting public comments on the Draft Guideline until December 24, 2001.

The fifty-six page document is available on the Internet at <http://www.cdc.gov/ncidod/hip/hhguide.htm> and can be accessed through the online edition of our newsletter. Send an email to us at [info@nursinglaw.com](mailto:info@nursinglaw.com) for details how to access our online edition.

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## CRNA's: Physician Supervision To Be Dropped.

On November 13, 2001 the Centers for Medicare & Medicaid Services published a notice it intends to drop the current physician-supervision requirement for Certified Registered Nurse Anesthetists from its conditions of participation for hospitals and ambulatory surgery centers.

However, the current physician-supervision requirement will remain in effect until the governor of the state where the facility is located sends a letter to Federal authorities attesting that the governor, in consultation with the state boards of medicine and nursing about issues of access to and quality of anesthesia services, has determined it is in the state's best interest to opt out of the current supervision requirement.

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Pages 56762 - 56769.