

## Home Health: Aide Cannot Travel With Client To Another State Where Aide Is Not Certified, Court Rules.

The New York Supreme Court, Appellate Division, ruled in favor of a home health agency that terminated an aide for escorting a client to another state where the aide was not certified.

She was expressly instructed by the agency she was not allowed to do that.

The aide was also accused of speaking to a client in an abusive and offensive manner in the client's home.

In general, misconduct justifying termination consists of failing to comply with the employer's established policies and procedures and acting in a manner contrary to the employer's best interests.

The court ruled the aide's termination was for just cause. **In re Thompson**, 713 N.Y.S.2d 229 (N.Y. App., 2000).

## Home Health: Diabetic's Foot Lesion Not Reported To Doctor, Court Finds Nurses Negligent.

***A case of professional negligence or malpractice against a nurse or other healthcare provider requires the patient to show proof of a breach of the professional standard of care and harm coming to the patient.***

***It is also essential for the patient to show proof of a cause-and-effect relationship between a healthcare professional's breach of the professional standard of care and the harm to the patient.***

***The courts accept nurses as expert witnesses on the standard of care for nurses.***

***However, a nurse is not qualified as a legal expert witness on the medical issue of cause-and-effect.***

***Without expert medical testimony linking a nurse's negligence to harm to the patient, the patient's lawsuit must be dismissed.***

COURT OF APPEAL OF LOUISIANA, 2000.

The patient was discharged after hospitalization for complications of diabetes, with a new pair of orthopedic shoes. She went home under the care of a home health nursing agency.

Four days later she called one of the home health nurses about a bleeding blister on her foot, apparently from her new orthopedic shoes. The nurse advised her on the phone, came out to the home the next day, and called the physician.

Another nurse came out the next day and saw the wound was discolored, but did not call the physician. The first nurse came out two days after this and cared for the wound, but did not advise the doctor of changes in the appearance of the wound.

That same day the patient's daughter took her back to the emergency room at the hospital. Her left leg was amputated below the knee because of gangrene at the site of the foot lesion.

The patient sued the nurses, their agency and the orthotic shoe company. The Court of Appeal of Louisiana agreed with a nursing expert witness the nurses were negligent for not seeing the danger in a non-healing foot lesion in a diabetic and for not updating the physician.

However, the court dismissed the case. The patient's nursing expert was qualified to testify on the nursing standard of care and to give an opinion on nursing negligence, but medical cause-and-effect is a medical issue on which a nursing expert is not qualified to testify, the court ruled. **Estate of Adams v. Home Health Care of Louisiana**, 767 So. 2d 855 (La. App., 2000).

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