

## Home Health: Court Sees Unanswered Questions About Investigation Of Aide's Prior Employment References.

A home health aide was caring for a fourteen year-old who was mute, severely retarded and afflicted with cerebral palsy.

The aide's duties included sitting with the child, feeding, changing, bathing and dressing her and performing range-of-motion exercises. The Court of Appeals of Indiana characterized her duties basically as "babysitting."

The aide was an insulin-dependent diabetic. The patient was not diabetic. The aide was not licensed, trained, expected or allowed to administer any medications to the patient.

Nevertheless, while caring for the patient in the patient's home the aide injected the patient with a large dose of insulin, causing a seizure.

The parents sued the home health agency on their daughter's and their own behalf.

### **Negligent Hiring / Negligent Supervision**

The court denied the home health agency's petition to throw out the case. In doing so the court did not rule definitively that the agency had been negligent. The court saw unanswered

questions for a jury to answer. A jury would decide whether the agency was negligent.

### **Reference Letters**

versus

### **Employment Background Investigation**

The agency claimed it adequately investigated the aide's employment background by getting two very positive letters of reference from persons who supervised the aide as an intern.

However, the court was concerned about three previous employers listed on the aide's employment application never being contacted. Obtaining personal letters of reference, no matter how positive a picture they paint is not a thorough employment background investigation.

Still, to win the lawsuit the family would have to prove that if the prior job references had been contacted they would have alerted the most recent employer to expect problems from the aide. Without that, legal cause-and-effect would be lacking. **Interim Healthcare of Fort Wayne, Inc. v. Moyer**, 746 N.E. 2d 429 (Ind. App., 2001).

## Chemical Burns From Disinfectant Bleach: Court Upholds Criminal Charges Against Nurse's Aide.

A developmentally disabled woman with cerebral palsy fell in the hallway of the group home where she and five others lived.

When she fell she defecated. The aide on duty told her to clean it up. She said she could not. She got up and went to her room. The aide poured Clorox bleach on the feces. The resident walked back into the hall and slipped and fell on the feces and Clorox. The aide left her lying there until the end of her shift.

When the next shift came on duty they got the resident up and helped her to her room. Later that evening her skin began to peel off onto her bed sheets. They called 911 and got her to the hospital, where they attempted to treat her severe chemical burns.

***A developmentally disabled resident with cerebral palsy was left lying in Clorox bleach the aide had poured on feces in the hall.***

***She had worked there six years. All the aides got annual OSHA training on hazardous substances and knew the danger of contact between Clorox and skin.***

***A ten-year suspended prison sentence was justified for reckless injury to a disabled individual.***

COURT OF APPEALS OF TEXAS, 2001.

By that time it was too late. Within twenty hours the resident died from multi-system failure related to dehydration from her extensive burns.

The aide was charged and convicted of recklessly causing injury to a disabled person. The Court of Appeals of Texas upheld the conviction.

According to the court, any properly trained personal caregiver knows the danger of prolonged skin contact with a hazardous substance and that contact with a hazardous substance requires copious washing of the affected area to remove the substance.

The aide also knew the longer contact continues and washing is delayed, the greater the danger of irreversible chemical burns. **Kennerly v. State of Texas**, 40 S.W. 3d 718 (Tex. App., 2001).