

Laparotomy versus Laparoscopy: No Informed Consent, Hospital Pays Settlement.

In an opinion that has not been released for publication, the Court of Appeal of California made note that a laparoscopy and a laparotomy are two very different surgical procedures.

A laparoscopy involves only small incisions, minimal scarring and a relatively short recuperation period. A laparotomy is a full-scale open abdominal procedure.

Apparently the unit clerk mistakenly filled in the word “laparoscopy” on the consent form. The circulating nurse had the patient sign it, then nodded her assent when the surgeon asked her in the O.R. if the patient had signed the consent form. The hospital settled for \$10,000. Then the case went to trial against the surgeon. The jury absolved him from liability for doing the planned laparotomy. **Stone v. Wilcox**, 2002 WL 31002599 (Cal. App., September 6, 2002).

Theft From A Healthcare Facility: Court Upholds Sentence Enhancement For Breach Of Trust.

Theft or embezzlement of funds from a health care facility is a Federal offense.

Federal law was recently applied to an administrative assistant in a nursing home who used her responsibility for making bank transactions to embezzle over \$30,000.

In an opinion that has not been selected for publication, the US Court of Appeals for the Ninth Circuit approved the handing down of an exceptionally long prison sentence for this individual.

Federal law provides for enhancement of the sentence when a person has used a position of trust to commit or conceal the commitment of a criminal offense. **US v. Montoya**, 2002 WL 31133353 (9th Cir., September 26, 2002).

Home Health: Aide Driving Home, Not In Course Of Employment, No Worker’s Comp Awarded.

While commuting to and from work an employee is not considered to be working and is not covered by worker’s compensation if there is an accident, as a general rule.

While employees are using their personal vehicles for purposes associated with the employer’s business they are covered by worker’s compensation and have the right to claim benefits when they are injured in motor vehicle accidents, on the other hand.

An aide worked for a home health agency. The Court of Appeals of North Carolina pointed out that agency employees were reimbursed for mileage to some extent, but reimbursement in and of itself does not determine whether an employee is on the job as opposed to commuting to and from the job.

The “going and coming” rule means that an accident occurring while an employee is commuting to and from work is not covered by worker’s compensation.

On the other hand, home health workers are covered by worker’s comp while using their own cars to transport patients, run errands for patients or to travel between patients’ homes.

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An employee with one fixed place of employment is commuting when going and coming from work. In this case the aide had only one patient, so her patient’s home was the aide’s fixed place of employment, the court ruled.

Home health workers with varying assignments are on the job and are covered by worker’s compensation while driving to patients’ homes from their own homes or returning home.

More straightforward situations come up when home health workers are driving from one patient’s home to another’s or running errands for patients or for the company in their personal vehicles. They are on the job and they are covered by worker’s compensation. **Hunt v. Tender Loving Care Home Care Agency, Inc.**, ___ S.E. 2d ___, 2002 WL 31162401 (N.C. App., October 1, 2002).