

Home Health: Work Comp Covers Workers Coming And Going To Assignments.

A home health aide was struck by a car crossing the street in front of her apartment to catch the bus to travel to the home of one of her employer's clients.

Her workers compensation claim was denied based on the accepted rule that injuries on public rights of way while commuting to and from work are not covered by workers comp.

Ordinarily an injury sustained by an employee on a public street or highway while the employee is going to or coming home from work is not eligible for workers compensation.

One exception, however, is a job where the employee must travel from one place to another as part of the job itself. A home health worker's job fits within this exception.

APPELLATE COURT OF CONNECTICUT
August 3, 2004

The Appellate Court of Connecticut ruled she was entitled to compensation. A home health worker's job necessarily involves travel to and from clients' homes as part of the job itself.

The court said it is not important whether the worker is going from home to the first assignment of the day, back home from the last or in between assignments. It is also not relevant whether the employer reimburses the employee for travel expenses. **Labadie v. Norwalk Rehab. Services, Inc.**, ___ A. 2d ___, 2004 WL 1732181 (Conn. App., August 3, 2004).

Labor And Delivery: Court Says Nursing Understaffing Is Valid Grounds For Lawsuit.

The rules of evidence impose an important gate-keeping function on the trial judge with regard to the admissibility of expert opinions.

Expert testimony is admissible only if it is reliable.

The court must determine if the expert is qualified by knowledge, skill, experience, training or education to state an expert opinion.

The court must also look at the facts underlying the expert's opinion, the expert's methodology and the strength of the link between the facts and the conclusions the expert has drawn.

The patients' nursing expert looked at the mother's and child's medical records, the depositions of all of the physicians and nurses involved in the patients' care, the nursing patient assignment lists, the birthroom records for the other patient the patients' nurse was attending to, the hospital's nursing policies and the accepted Perinatal Guidelines and publications from the Association of Women's Health, Obstetric and Perinatal Nurses.

UNITED STATES DISTRICT COURT
KANSAS
July 19, 2004

The child was delivered by emergency cesarean twenty-four hours after the mother was admitted and began elective induction of labor. The child has permanent brain damage related to birth hypoxia. The mother's uterus was ruptured and her bladder, cervix and vagina were severely lacerated.

A lawsuit was filed against the hospital on the mother's and child's behalf.

At this stage of the litigation the US District Court for the District of Kansas has not made a definitive ruling on the hospital's liability. The court has ruled only that the hospital is not entitled to dismissal of the case on the grounds that the patients' nursing expert is not qualified to render an expert opinion. That leaves it for a civil jury to hear all the expert medical and nursing testimony and to render an ultimate decision.

Substandard Nursing Care Nursing Understaffing

The court ruled the patients' nursing expert had the qualifications and had examined all the relevant facts to reach an opinion how the hospital was negligent.

The nursing expert found fault with a lack of one-on-one care during critical phases of the mother's labor. The expert also criticized the fact there was no continuity of care for the mother during her labor, that is, there was frequent shifting and sharing of nursing responsibility.

The expert could point to the care another patient was getting from the mother's nurse at the exact moments the fetal monitor showed she should have been attended to by a nurse who should have notified her physician what was going on.

Apparently the pitocin was continued, at a high rate of flow, despite warnings from the fetal monitor of ominous late decelerations. In the nursing expert's opinion that was substandard care caused or compounded by understaffing. **Holt. v. Wesley Medical Center, LLC**, 2004 WL 1636571 (D. Kan., July 19, 2004).