

## Needlestick: Visitor Cannot Sue For Fear Of HIV.

The Court of Appeals of Kentucky, in a recent unpublished opinion, did not elaborate on how a hospital visitor's leg came to be stuck by a used hypodermic needle except to say the needle was improperly discarded on a nurse's medication cart. The needle itself was never located and was never tested for contamination.

The jury awarded the visitor \$1,150 for physical and emotional distress from the injury and follow-up testing. However, because follow-up testing of the visitor was consistently negative for HIV and other infectious diseases the judge would not let the jury even consider awarding compensation for fear of HIV.

The Court of Appeals agreed that without proof the needle was contaminated and infection could have resulted, there is no basis for a lawsuit over fear of HIV infection, as other US courts have ruled that have had to consider the same question in similar lawsuits. Booker v. Galen of Kentucky, Inc., 2003 WL 21828795 (Ky. App., August 8, 2003).

## Emergency Room: Patient Left Voluntarily, No EMTALA Violation.

The hospital's director of emergency services who was an R.N. met the patient in the hallway, sat her in a wheelchair, asked about her complaints, quickly assessed her status and wheeled her into the emergency department.

The E.R. triage nurse saw her twenty-two minutes later, classified her as non-urgent and checked her twenty-five and forty minutes later.

When her family wheeled her out to the parking lot the triage nurse and a security guard went after them. The family adamantly insisted they were taking her elsewhere, so the triage nurse and the guard helped her into the car. She died later that night from meningitis at another facility. The Court of Appeals of Texas, in an unpublished opinion, found no violation of the Emergency Medical Treatment and Active Labor Act. Johnson v. Nacogdoches County Hospital, 2003 WL 21999408 (Tex. App., August 20, 2003).

## Sleeping On The Job: Court Upholds Arbitrator's Finding Of Just Cause For Nurse's Termination.

A hospital staff nurse was on the hospital's registry of staff nurses who wished to make themselves available for private-duty assignments on top of their assigned staff-nursing shifts.

At the time in question she was working the midnight shift private-duty for the family of a hospital patient recovering from neck surgery who had a tracheostomy and was unable to talk, only being able to communicate with gestures and written notes.

A family member complained to the hospital that the nurse had fallen asleep on the job and failed to respond to the patient's needs. There was no actual harm to the patient.

After an investigation, in which a staff nurse on the floor verified she had fallen asleep, the hospital terminated

***The nurse was sleeping on the job according to a family member and another nurse working on the floor.***

***Her misconduct did not harm the patient but it did compromise patient care.***

***The hospital had just cause to terminate the nurse. It did not change anything that the nurse technically was working private-duty for the family rather than for the hospital.***

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her. The union filed a grievance which was turned down by an arbitrator.

The US District Court for the Southern District of New York agreed with the arbitrator that a nurse falling asleep on the job is misconduct justifying termination, with or without actual harm to the patient.

In addition, under US Federal labor law, when the union pursues a grievance on a worker's behalf and the union does not appeal the arbitrator's decision turning down the grievance, the employee cannot herself file an appeal in court unless the union was guilty of failure to provide fair representation thus undermining the arbitration process. Velasco v. Beth Israel Medical Center, \_\_ F. Supp. 2d \_\_, 2003 WL 22038289 (S.D.N.Y., August 28, 2003).