

## Flu Immunization: Public Health Emergency, Nurse Cannot Be Sued.

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### Legal Immunity Healthcare Professionals Countermeasures in a Declared Public Health Emergency

The PREP Act states that a covered person shall be immune from suit and liability under Federal and state law with respect to all claims for loss caused by, arising out of, relating to or resulting from the administration of a covered countermeasure to an individual.

The definition of a covered person includes licensed health professionals or other individuals who are licensed by the state in which the countermeasure was prescribed and authorized to administer and dispense such countermeasures.

The only exception to the broad sweep of immunity granted to covered persons with respect to administration of countermeasures is for death or serious injury caused by willful misconduct.

Congress also enacted the Countermeasures Injury Compensation Program creating an administrative agency to handle claims for certain injuries stemming from countermeasures taken in response to the declaration of a public-health emergency, which was intended to be the exclusive legal remedy for persons with such claims.

### Lack of Consent Does Not Create Basis for Legal Action

The Court was not persuaded that an exception should be read into the PREP Act, as argued by the mother in her lawsuit, for situations involving a duly declared public health emergency where a countermeasure is administered without informed consent. A healthcare provider could be held liable if an immunization was given without consent under normal, everyday circumstances.

The Act itself and supporting Federal regulations and an Executive Order from the President make no mention of any intent by Federal lawmakers for the courts to read in such an exception. Parker v. St. Lawrence County Public Health Department, \_\_\_ N.Y.S.2d \_\_\_, 2012 WL 5869773 (N.Y. App., November 21, 2012).

## Nursing Assessment: Damages Awarded For Negligence.

***There was no error by the judge who assigned fault 100% to the night nurse and held the agency that supplied her to the hospital 100% liable for the \$1.4 million judgment.***

***The day nurse, the hospital and the treating physician were properly dismissed from the lawsuit.***

***There was no evidence the day nurse breached the standard of care in her nursing assessments or her nursing care of the patient.***

***There was nothing wrong with the treating physician's initial diagnosis and plan of care for the patient.***

***The patient was already irreversibly paralyzed by the time the hospital's resident was alerted to the patient's condition by the night charge nurse. The medical review panel criticized him for delay in obtaining the diagnostic scans, but even if the scans were done and the neurosurgeon came in and operated earlier the outcome would not have changed.***

***When the treating physician was finally contacted during the night by the resident at the hospital, there was likewise nothing he could have done at that point that would have changed the outcome.***

COURT OF APPEAL OF LOUISIANA  
December 5, 2012

The patient was an insulin-dependent diabetic with a history of drug abuse.

During the night he was admitted to the hospital suffering from abdominal pain, back pain and vomiting which had caused severe dehydration.

The diagnosis was diabetic ketoacidosis which his physician intended to treat by gradually restoring hydration and correcting his blood sugars through careful insulin management.

At 9:00 a.m. the physician determined that his condition was improving and ordered his IV hydration, antibiotics and blood sugar testing continued.

The day nurse performed two head-to-toe assessments of the patient. She charted that the abdomen was soft, that there were active bowel sounds and that the patient was voiding yellow urine. He had equal range of motion in his upper and lower extremities, equal and strong extremity strength and a steady gait.

### Night Nurse's Assessments Significant Findings Not Reported

At 7:00 p.m. the night nurse who was an agency nurse took over the patient's care. Right away the patient's wife informed the nurse that his legs were numb and that one leg had flopped out of the bed. The nurse told the wife this was caused by his fever. The nurse did not report this to the charge nurse or to a physician.

At 8:15 p.m. the night nurse did her first head-to-toe assessment. She charted that the abdomen was firm and strength was weak in all the extremities. There was no charting as to weakness being equal or unequal and her note for sensation was "unable to assess." There was no report to the charge nurse or to a physician.

At 3:40 a.m. the patient told the nurse he could not move his legs at all. He had not voided since 1:30 p.m. the previous afternoon, so the nurse inserted a Foley and obtained a large amount of dark urine.

Finally the nurse notified the charge nurse who called in a resident. By this time the patient was irreversibly paraplegic from an epidural abscess in the thoracic spine which could not be corrected surgically. The Court of Appeal of Louisiana approved a \$1.4 million judgment. Johnson v. Ray, \_\_\_ So. 3d \_\_\_, 2012 WL 6055584 (La. App., December 5, 2012).