

## Malpractice: Expert's Affidavit Said Nothing About The Nurses, Hospital Let Out Of The Case.

**M**any states now will not allow a healthcare malpractice lawsuit to be filed in court without an expert witness's affidavit. In general, it is necessary for the affidavit to contain a statement of the expert's professional qualifications to render an opinion, the expert's opinion that professional malpractice or negligence has occurred, and a summation of the facts upon which the expert's opinion is based.

In a recent case from the Court of Appeals of Georgia, the complaint filed by the patient's attorneys alleged that the care given at the hospital was not adequate. However, the expert witness's affidavit was silent as to what, if anything, the hospital's nurses or other staff did or failed to do for the patient. Although the affidavit met the baseline legal requirements to keep the physicians in the case as defendants, the court had to dismiss the hospital. [Goins vs. Tucker, 489 S.E. 2d 857 \(Ga. App., 1997\).](#)

## Heroin Overdose: Hospital Not Liable, Court Says.

**T**he patient had a long history of problems with narcotics. He had been in an out of drug rehab. He was admitted to the hospital following an overdose. He was given a psychiatric evaluation and treated for anxiety, agitation, depression and withdrawal symptoms.

Eleven days into his stay on the psychiatric unit, he injected himself with an overdose of heroin someone smuggled in to him, and died. The District of Columbia Court of Appeals ruled the hospital was not responsible for his death. [Gregory vs. Greater Southeast Community Hospital Corp., 697 A. 2d 1221 \(D.C. App., 1997\).](#)

## Sleeping On The Job: Discrimination Charges Against Hospital Not Proven - Firing Upheld.

***A healthcare facility must apply its disciplinary policies toward employees with an even hand.***

***It is ostensibly proper to impose strict disciplinary measures on a patient-care worker caught neglecting his responsibilities by sleeping on duty.***

***However, to uphold the anti-discrimination laws, the courts must look carefully at adverse employment action taken against a minority employee.***

***When adverse action has been taken against a minority employee, the employer must show there was a legitimate non-discriminatory reason. The employee still has the right to contend an ostensibly legitimate reason for his firing was only a pretext for discrimination.***

***Three of the seven employees who had ever been fired for sleeping on the job were fired only after a third incident. None of the three were Asian-American. This employee, fired for his second offense, said this was a pattern of uneven discipline toward Asian-Americans.***

UNITED STATES DISTRICT COURT,  
ILLINOIS 1997.

**T**he mental health technician in this case filed an employment discrimination lawsuit in Federal court for being discharged for a second incident of sleeping on the job. The incident was shortly after 6:00 a.m. on the third shift.

The U.S. District Court for the Northern District of Illinois reiterated the steps mandated by the U.S. Supreme Court for evaluating claims of employment discrimination. Is the victim a member of a protected class of persons, e.g. a racial or national minority? Has he performed his job satisfactorily? Has he suffered adverse employment action? Has the employer treated comparable non-minority employees more favorably?

If these questions are answered in the affirmative, the employer can still overcome charges of discrimination with proof of a legitimate, non-discriminatory reason for how the employee was treated. Even then the employee can still argue the reason the employer has offered is merely a pretext for unlawful discrimination.

The employee pointed out that every other caregiver caught sleeping on duty at the facility who ever got a second and a third chance was a non-Asian American.

The court agreed in principle that ostensibly legitimate disciplinary standards applied unevenly toward a minority employee can result in valid charges of unlawful employment discrimination.

However, the court ruled against the discharged employee in this case. There is a danger posed by caregivers sleeping on the job when staffing levels are minimal. Thus this employee had committed a more serious offense against the welfare of the patients than the others caught sleeping on the job to whom he wanted to compare himself, who were not fired until their third offenses, the court said. [Yohannan vs. Patla, 971 F. Supp. 323 \(N.D. Ill., 1997\).](#)