

Employment Grievance: Nurse's Union Owes Fair Representation.

An African-American nurse filed grievances against her employer for racial discrimination. The grievances resulted in findings that certain personnel reassignments were not discriminatory and that discipline was based upon a proven patient-care error.

The nurse objected on the grounds that her union was not providing her with fair representation in the handling of her grievances against her employer.

Section 301 of the US Labor Management Relations Act allows a private-sector employee to file a so-called "hybrid" lawsuit claiming the union failed in its duty to provide fair representation in the handling of a grievance and also that the underlying grievance was prompted by the employer's breach of the union contract.

UNITED STATES DISTRICT COURT
NEW YORK
September 10, 2004

The US District Court for the Eastern District of New York agreed in principle that any private-sector employee covered by a collective bargaining agreement has rights not only under the collective bargaining agreement, but also has the right under Federal law to have the union provide fair and effective representation toward vindication of those rights.

That being said, the court found no clear-cut evidence of substandard union representation in this case. Blossomgame v. N.Y. Health & Human Service Union, 2004 WL 2030285 (E.D.N.Y., September 10, 2004).

Osteoporosis: Court Sees No Grounds For Lawsuit Alleging Caregiver Mishandled Patient.

X-rays before the patient's knee surgery showed no fracture.

X-rays after she complained of severe pain in her leg revealed a femur fracture.

All the x-rays prove is that the fracture occurred after her surgery, while the patient was on the hospital's skilled nursing unit.

Before-and-after x-rays do not prove a femur fracture was caused by a caregiver's negligence, that being the key to a lawsuit.

That is an example of the post hoc fallacy, the tendency to assume that because one thing happened before another the first was the cause of the second.

That brand of faulty logic is strictly out of bounds in professional negligence cases.

The testimony of the doctors and nurses at the treating hospital, the only legally acceptable evidence in the case, was that disuse osteoporosis rather than negligent mishandling of the patient by a caregiver, was the most likely explanation for the patient's femur fracture.

COURT OF APPEALS OF KANSAS
October 4, 2004

The Court of Appeals of Kansas affirmed the lower court's summary dismissal of the patient's medical negligence claim.

**Post Hoc Logic Not Valid
Expert Opinion Required**

The patient had been helped into bed by a nursing assistant. Her leg was being positioned as indicated in her physician's orders. The patient felt her leg crack and she cried out in intense pain.

The patient later stated that the aide gave her leg too hard a tug and dropped her leg rather than lowering it gently.

The patient's legal case relied solely upon two radiology reports. One from before her knee surgery showed no fracture; one after the incident in question showed her femur was fractured.

The hospital, on the other hand, had a medical expert and a nursing expert who each stated that there was no departure from the proper standard of care in how the aide assisted and positioned the patient. The patient's own treating physician testified the patient had extensive pre-existing osteoporosis and admitted that spontaneous fractures can occur in osteoporotic patients even with the best of care without anyone necessarily being at fault.

The court reaffirmed the principle that faulty *post hoc* logic is strictly out of bounds in professional malpractice litigation. Before and after x-rays, in and of themselves, prove absolutely nothing that would be relevant in a court of law.

The court reaffirmed the principle that expert testimony is required to establish the legal standard of care. The only expert testimony came from the medical and nursing experts at the hospital.

The patient's own opinion that the aide pulled and tugged on her leg improperly would likewise be out of bounds in a court of law because this particular patient was not qualified as an expert on nursing standards and practices. Cunningham v. Riverside Health System, Inc., ___ P. 3d ___, 2004 WL 2213681 (Kan. App., October 4, 2004).