

## Quality Review: Court Upholds Physician's Suspension Based On Nurse's Incident Report.

The Colorado Court of Appeals did not delve into the facts of the underlying incident on the labor and delivery unit.

The only relevant issue was whether the two physicians who reported another physician to the hospital's peer-review committee and got his staff privileges suspended acted reasonably and in good faith with the information available to them.

The court ruled it was reasonable for the two physicians to report a fellow physician and for the peer-review committee to move forward based upon the incident report prepared by the attending obstetrical nurse.

The court said the reporting physicians and the review committee were entitled to accept the obstetrical nurse's opinion that the physician in question had committed malpractice and that his incompetence was an ongoing grave threat to the safety of mothers and fetuses.

### **No Lawsuits Permitted Against Persons Acting In Good Faith**

The suspended physician tried to bring an expert witness in obstetric medicine to court to review the underlying incident and to offer an expert opinion that the suspended physician was not guilty of malpractice.

However, the court said reviewing and reevaluating the underlying incident was not the issue. A Federal law, the Health Care Quality Improvement Act, flat-out bars lawsuits against internal peer-review bodies and against persons who report physicians unless the physician who was reported can prove they acted in bad faith.

Bad faith means acting with a motive other than furtherance of quality care, such as personal malice or bias or professional jealousy. Bad faith can also mean going ahead without a reasonable belief in the truth of the allegations based on an actual investigation.

The court dismissed the lawsuit. It was not bad faith for the physicians to rely on the nurse's incident report. **Berg v. Shapiro**, 36 P. 3d 109 (Colo. App., 2001).

***The US Health Care Quality Improvement Act disallows suits against persons who sit on or who assist professional review committees, if certain conditions are met.***

***To be immune from suit anyone involved with an internal peer-review body must act with a reasonable belief that his or her actions are in furtherance of quality health care and there must be a reasonable effort to obtain the facts.***

***The physician who is disciplined is entitled to advance notice to prepare a defense before being disciplined or suspended.***

***The obstetrical nurse herself was not sued. Two supervising physicians were sued because they relied upon the nurse's incident report in recommending another physician's staff privileges be suspended.***

***However, the physician who came in to testify as an expert in quality management stated the two physicians who filed the complaint acted reasonably in all respects by relying on an incident report prepared by an obstetrical nurse.***

COLORADO COURT OF APPEALS, 2001.

## Premature Return To Work: Nurse's Case Thrown Out.

A nurse injured her neck off the job doing stretching exercises. At the time she was on light duty at work from lower extremity injuries from a fall.

Her physicians diagnosed only a cervical strain and cleared her to return to work.

One month after she returned to work she was terminated because she was physically unable to do her job. Two weeks later she had an MRI that showed protruding and herniated disks in her neck.

She sued her physicians for medical malpractice.

***In a professional malpractice case the patient must prove the medical professional departed from the accepted standard of care.***

***There is also a strict requirement in medical malpractice cases that the cause-and-effect link between the negligent act and harm to the patient must be proven with expert medical testimony.***

APPELLATE COURT OF CONNECTICUT,  
2001.

The Appellate Court of Connecticut agreed in general terms it would be medical malpractice for a physician to misdiagnose the true severity of a patient's condition and send the patient back to work prematurely.

However, in this case the physician who did the MRI was not able to state an opinion to a reasonable degree of medical certainty that the nurse was sent back to work too soon or that it caused or aggravated the cervical disk problem, so her case was dismissed. **Gordon v. Glass**, 785 A. 2d 1220 (Conn. App., 2001).