

Home Care: Negligent Care For Urostomy Patient Leads To Large Verdict.

The patient went home after thirteen months in the hospital. He had had extensive surgeries for massive trauma from a construction-site accident. He had a colostomy, urostomy, amputation sites and extensive skin grafts that were still healing. Strict cleanliness was critical to his recovery.

Home health aides are expected to comprehend the critical importance of maintaining the integrity of a closed urine-containment system.

Urine cannot be allowed to leak. Urine is sterile in the body, but when exposed to air it breaks down into urea/ammonia which causes skin tissue to break down.

COURT OF APPEAL OF LOUISIANA, 2002.

His home health aides allowed healthy skin on his trunk and his skin graft sites to rest on urine-soaked towels. They did not take care of a leak at his urostomy site or report it to his physician.

He had jerking and spasms in his lower extremities and phantom pain, both of which can be signs of infection. In addition he had headaches and was sweating profusely, other signs that should have alarmed his aides.

The problems were eventually noted and re-corrected at the hospital. He was discharged home in satisfactory condition, in the care of a different home-health agency. The Court of Appeal of Louisiana approved a \$300,000 verdict. McGrath v. Excel Home Care, Inc., 810 So. 2d 1283 (La. App., 2002).

Religious Discrimination: Court Says Nurse Entitled To Reasonable Accommodation.

The courts look at religious discrimination basically the same as disability discrimination.

An employee must belong to something or believe in something the courts will recognize as a religion.

That was true in this case. The nurse belonged to the Roman Catholic church and believed in the church's moral stance against birth control.

The employee must experience a problem doing his or her job because of the employee's religious beliefs or practices.

The nurse in good conscience could not advise subjects to use birth control even while participating in a clinical drug trial.

The employee must request from the employer a specific accommodation to the employee's religious beliefs or practices.

The nurse in this case agreed she would do all of the other nursing tasks in screening and evaluating the research subjects; someone else had to read and explain to them the part of the medical consent form about birth control.

The US District Court for the Western District of New York ruled the nurse's religious discrimination case appeared to have sufficient validity to be allowed to go to trial before a civil jury.

Was it an undue hardship to have another nurse complete the clinical screening for drug-trial subjects by going over the clinic's recommendation they use birth control?

Was it improper for the nurse to have gone to the parking lot and given a patient a crucifix and told him to pray, after an adverse medication reaction, and was the adverse reaction due to a medication error by the nurse, and was that grounds for firing, or was she fired for anti-Catholic bias? The nurse would have her day in court. Lotosky v. University of Rochester, 192 F. Supp. 2d 127 (W.D.N.Y., 2002).

When an employee requests accommodation for the employee's religious beliefs or practices, the employer must allow it unless it would impose an undue hardship.

By definition, an accommodation that imposes undue hardship on the employer is not reasonable.

An employer's failure to allow an accommodation that is reasonable is religious discrimination.

The question for the jury will be whether or not having someone else go over the issue of birth control involved an undue hardship to this nurse's employer.

UNITED STATES DISTRICT COURT,
NEW YORK, 2002.