Anaphylaxis: Court Finds No Negligence By School Nurses.

The now-deceased nine year-old autistic child suffered from asthma as well as a wide range of allergies.

The local school board's accommodations to Federal guidelines for meeting his special needs were to place him in a private school and hire a private duty nurse to accompany him to school and while he was at school. There was also a school nurse on duty while school was in session.

Based on concern that his private duty nurse was "smothering" him and hindering his development, the custom began for the private duty nurse to sit just outside the classroom instead of by his side.

The teacher brought a basket of blueberries into the classroom for multi-sensory enhancement of a story she was to read aloud about life in Maine, known for its blueberries. The child was seriously allergic to blueberries.

Lunch was right after this class. In the lunchroom the boy started having trouble breathing and asked his nurse for his "nebi," his name for his asthma nebulizer.

His nurse checked his breathing with a stethoscope, poured Proventil into the nebulizer and started a treatment, believing that stress or agitation had provoked an asthma attack.

When his breathing did not improve she gave him another Proventil treatment. When that did not help she took an epi-pen from the bag packed by his mother that always went with him and gave the epinephrine. She gave another epi-pen ten or fifteen minutes later and then a third.

The school nurse came to the room along with the headmaster. One of them called 911. While they were waiting the private duty nurse gave him oxygen. The ambulance was delayed by an unusual volume of emergency response calls.

The boy was taken to the hospital, but died two days later. At the mother's insistence the cause of death on the death certificate was changed from natural causes to hypoxic ischemic encephalopathy from acute anaphylaxis.

The New York Supreme Court, Appellate Division, ruled there was no departure from the standard of care by either of the nurses. **Begley v. City of New York, __ N.Y.S.2d __, 2013 WL 5225242 (N.Y. App., September 18, 2013).**

It was not a departure from accepted nursing practice, once the child's signs of respiratory distress began, for the nurses to believe at first that the child was having an asthma attack from stress or agitation rather than anaphylaxis from exposure to an allergen in the environment and to go ahead with asthma nebulizer treatments.

Although the school itself may be responsible, it was not the child's private duty nurse's responsibility to police the classroom environment to make sure no exposure occurred to substances to which the child was allergic.

Even so, blueberries were not on the long list the mother had provided.

Once the nurses had reason to believe the child was having an anaphylactic reaction, it would have been inadvisable to administer the liquid Benadryl he had in his bag, due to the risk of aspiration posed by his respiratory difficulties.

One of the epi-pens that was used did have an expiration date that was a year past, but it was probably still effective and was not inappropriate to use in an emergency situation.

NEW YORK SUPREME COURT
APPELLATE DIVISION
September 18, 2013

Refusal To Restrain Patient: Termination Upheld.

A nurse called a security officer to a psychiatric room in the E.R. to help her place a combative patient in four-point restraints who had been involuntarily admitted for psych issues and an overdose.

Instead of assisting the nurse as she was told the officer questioned the patient why she was in the hospital. The patient said she was only in "for drugs" and had not been committed for psychiatric care.

The officer at this point flatly refused to assist the nurse. She went on to explain to the nurse that hospitalization for drugs was different than psychiatric hospitalization, that is, a drug-treatment patient could sign herself out and leave any time she wished. The officer demanded the nurse show her the patient's legal paperwork so that she herself could verify the patient's status. Then the officer informed the patient she was free to sign herself out of the hospital and leave.

This was the last of a series of insubordination incidents. The officer was terminated. She was fifty-two years old and a minority and sued for discrimination.

Other than that she is fifty-two years old and a minority, the fired employee has nothing to back up her claim of discrimination.

UNITED STATES DISTRICT COURT
MICHIGAN
September 9, 2013

The US District Court for the Eastern District of Michigan dismissed her case.

The US civil rights laws do give the benefit of the doubt to a minority or a person in the protected forty-to-seventy year age bracket when adverse action is taken by the person's employer.

However, in this case the Court said that a major episode of insubordination was a legitimate non-discriminatory reason behind the action taken by the employer. **Loyd v. St. Joseph, 2013 WL 4805751 (E.D. Mich., September 9, 2013).**