

HIV-Positive Employee: Disability Discrimination Case Affirmed.

In March, 1996 we reported that the Appellate Court of Illinois had approved an HIV-positive nursing home cook's disability discrimination case against his former employer who fired him over his HIV status. (*Employee Fired For HIV Status: Disability Discrimination Allegations Upheld By Court.*, Legal Eagle Eye Newsletter for the Nursing Profession, (4)6, Mar. '96, p. 3.)

The Appellate Court's ruling has been affirmed by the Supreme Court of Illinois.

Being HIV-positive is recognized as a disability or handicap for purposes of employment discrimination laws.

An employer's action toward an HIV-positive employee must be based on an individualized assessment whether the particular employee's contact with patients on the job poses a risk to patients, in light of existing scientific knowledge as to how the HIV virus is transmitted

SUPREME COURT OF ILLINOIS, 1996.

The employee was fired without checking with the state health department to ascertain if he posed a risk to the residents of the nursing home, and directly in the face of a detailed letter from his physician that he posed no risk whatsoever to them, which is unlawful disability discrimination, the court said. Raintree Health Care Center vs. Illinois Human Rights Commission, 672 N.E. 2d 1136 (Ill., 1996). (In contrast see *HIV+ Surgery Tech: Removal From OR Ruled Not Disability Discrimination.*, Legal Eagle Eye Newsletter for the Nursing Profession, (4)3, Dec. '95, p. 1.)

Emergency Medical Treatment And Active Labor Act (EMTALA): Nurse's Assessment Can Trigger Hospital's Duty To Provide Stabilizing Care.

A nurse may have to send a patient directly to cardiac or intensive care, without waiting for the emergency room physician to act.

A hospital's policy that every patient presenting in the emergency room with chest pains is to have an EKG simultaneously to the physician being notified means implicitly that a nurse's history and physical assessment can be the basis for immediate action.

The emergency room charge nurse's assessment of a patient can establish that the patient is suffering from an emergency medical condition, and trigger the hospital's duty under the Emergency Medical Treatment And Active Labor Act to provide necessary stabilizing medical treatment.

All persons presenting in the emergency room must be afforded the same medical screening examination and necessary stabilizing medical care for an emergency medical condition, regardless of insurance coverage or ability to pay.

UNITED STATES DISTRICT COURT,
IOWA, 1995.

Any hospital which participates in the Medicare program, if it has an emergency department, must provide an appropriate medical screening examination to any patient who presents in the emergency room. Necessary stabilizing medical care must be offered if an emergency medical condition is found to exist.

The screening examination must be the same for every patient with the same presenting complaints, and stabilizing care must be the same for every patient with the same condition, whether the patient has private insurance or is on public assistance, according to the U.S. District Court for the Northern District of Iowa, which carefully reviewed the EMTALA litigation decisions from other U.S. courts before rendering its own opinion in a recent case.

In this case, the hospital's policy was for the emergency room charge nurse to oversee initial screening in the emergency room. For patients presenting with chest pains, according to hospital policy, an EKG was to be obtained simultaneously with the physician being notified. According to the testimony of two emergency department staff nurses, it was hospital practice for the nurses to move acutely ill patients to cardiac or intensive care before the emergency room physician got around to seeing them, if that was warranted by the patient's initial screening and nursing physical assessment.

When a patient on public assistance was not given an EKG and was left to be seen by the emergency room physician, with chest pains for which his physician had told him to go to the emergency room and with signs of acute myocardial infarction, the court read a discriminatory motive into the nurses' conduct and ruled the hospital had violated the EMTALA. Brodersen vs. Sioux Valley Memorial Hospital, 902 F. Supp. 931 (N.D. Iowa, 1995).