

Workers Comp: Field Nurse On The Job While At Home.

A home health nurse/weekend supervisor slipped and fell in her own driveway at home carrying her job-related paperwork, pager, cellular phone, a newspaper and a take-out pizza she had bought for her family on the way home.

She applied for workers compensation for a broken ankle.

The RN field nurse/weekend supervisor was on call 24 hours a day over the weekend to respond to patient calls. She did her required paperwork at home.

She was bringing her job-related paperwork and equipment into her home when she fell in her own driveway.

COURT OF APPEALS OF GEORGIA
September 16, 2004

The Court of Appeals of Georgia ruled she was conducting business for her employer at the time and was entitled to workers compensation benefits.

She was bringing time-sensitive paperwork into her home, the place where she conducted her employer's business of being on call for home-health patients 24/7 over the weekend and completing required paperwork that would be due first thing on Monday morning.

Ordinarily when an employee has ceased the employer's tasks for the day and is going home the employee ceases to be eligible for workers comp, but that was not the situation here, the court said. Amedisys Home Health, Inc. v. Howard, __ S.E. 2d __, 2004 WL 2066519 (Ga. App., September 16, 2004).

Faulty Transfer: Court Allows Patient To Sue.

Shortly after an outpatient hernia repair a clinic employee tried to help the patient transfer from a wheelchair to his car.

The clinic employee tried to have the patient stand up by himself on both legs during the transfer. One leg still being numb from the anesthesia, the patient fell and was injured.

The patient sued the outpatient surgical center for negligence.

The patient's lawyer mistakenly designated a physician as his expert witness on the legal standard of care for transferring a patient, while it was the patient's nursing expert who was qualified as an expert and gave an expert opinion that the transfer technique was faulty.

One of the patient's legs was still numb from the surgical anesthesia.

Even a non-expert lay person should know the patient cannot stand up on his own and that two persons must assist him in transferring from a wheelchair to a car.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
September 17, 2004

The Court of Appeal of California was unwilling to decide the ultimate validity of the patient's case based on a legal technicality in the designation of expert witnesses. The patient had all the expert and lay testimonial evidence he needed.

Any caregiver who knows a patient's leg is numb should know not to stand the patient up and that two persons, himself and a family member or himself and another caregiver, must assist in a safe transfer from a wheelchair. Lawrence v. Frost Street Outpatient Surgical Center, 2004 WL 2075401 (Cal. App., September 17, 2004).

Faulty Assist: Patient Must Have An Expert Witness.

The patient had been treated in the hospital for a broken pubic bone.

The patient filed a lawsuit against the hospital claiming that she was injured while a hospital employee was assisting her in moving from the bathroom back to her hospital bed.

The patient's case was dismissed by the lower court on grounds that the patient's case required but did not have an expert witness on the legal standard of care.

This case sounds more like medical malpractice than ordinary negligence.

Expert testimony is an absolute prerequisite to the patient's case.

If the patient cannot or does not have expert testimony the defendant health-care professional is entitled to dismissal of the patient's lawsuit.

MICHIGAN COURT OF APPEALS
UNPUBLISHED OPINION
September 9, 2004

The Michigan Court of Appeals agreed with the lower court and ruled in the hospital's favor dismissing the case.

The act of assisting a patient in her condition required professional training and the exercise of professional judgment to minimize the patient's discomfort and to guard against further injury.

This was not a case where the issues would be within the common knowledge of lay persons on a jury who could decide the case without the benefit of expert testimony. The lack of such testimony was a fatal flaw requiring dismissal of the case. Campins v. Spectrum Health, 2004 WL 2009264 (Mich. App., September 9, 2004).