

## Life Insurance: In-Home Exam By A Nurse Is Not A Medical Examination, Court Rules.

A life insurance salesman came to the home to try to sell the couple a policy on the husband's life.

The husband told him he had high blood pressure and was hospitalized for a stroke ten years earlier but was in good health now.

A registered nurse came to the home, took his blood pressure and obtained a urine sample.

A week later the couple received written confirmation a policy had been issued. The salesman came back and obtained the husband's signature on an application form with what he had told him at the first meeting typewritten on it.

Three months later the husband died of massive heart failure.

The insurance company balked at paying the widow the \$60,000 face-value benefit of the policy. The widow sued.

### Medical Exam versus No Medical Exam

The Appeals Court of Massachusetts pointed out it is easier for a life insurance company to deny coverage when the company has obtained a medical examination before issuing a policy. The law sets a higher burden of proof for the insurance company to refuse to pay when there has been no medical examination.

If a policy is issued without a medical examination, to deny coverage the insurance company must prove the insured made statements which were willfully false, fraudulent or misleading.

If the policy was issued after a medical exam, to deny coverage the insurance company need only show that the insured made a misrepresentation with an actual intent to deceive or that the insured's misrepresentation increased the risk of loss.

The lower court ruled for the insurance company. The Appeals Court of Massachusetts reversed. An incorrect statement does not necessarily prove fraud or willful intent to deceive, the Appeals Court ruled, and there was no medical exam before the policy was issued.

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***The court recognizes that nurses and nurse practitioners now assume many of the duties of physicians.***

***However, the term "medical examination" in the life-insurance statute must be given the literal dictionary meaning the legislature originally intended.***

***When a life insurance company is refusing to pay on a policy it has issued, the term "medical examination" means an examination by a physician.***

APPEALS COURT OF MASSACHUSETTS  
October 11, 2002

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The upshot of the ruling is to make it more difficult for a life insurance company to dispute coverage when a nurse and not a physician examined the insured prior to the life insurance policy being issued.

### A Nurse's Assessment Is Not A Medical Examination

By definition, the Court of Appeals ruled, a nurse's assessment is not a medical examination for life insurance purposes.

The nurse only weighed the man, took his blood pressure twice and his pulse once, tested his urine sample for albumin and sugar and mailed it off to a lab. She left the spaces on the exam form blank relating to abnormalities of the eyes, blood vessels, respiratory organs or nervous system and did not note whether heart murmurs could be detected. However, the thoroughness of the nurse's technique is not the point, the court said. It just is not a medical examination. ***Robinson v. Prudential Life Insurance Company of America***, \_\_ N.E. 2d \_\_, 2002 WL 31261392 (Mass. App., October 11, 2002).

## Mental Health: Nurses Can Testify As Acquaintance Witnesses For Involuntary Commitment.

The Court of Appeals of Arizona recognized that nurses can testify in support of a court petition to hold and treat a mental health patient involuntarily.

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***Nurses who have cared for a patient during a short-term hold can testify as acquaintance witnesses in the court hearing held to determine if there will be a long-term commitment.***

***The nurses are not part of the evaluation team who examine the patient and give expert opinions as to the patient's psychiatric diagnosis, disability and danger to self or others.***

***Instead, the nurses testify about their daily observations of the patient's demeanor, verbalizations and willingness or unwillingness to take meds and participate in treatment.***

COURT OF APPEALS OF ARIZONA  
September 26, 2002

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Nurses who have cared for the patient can testify as acquaintance witnesses. They have frequent close contact with their patients, the court said, and can be very enlightening as to the need for hospitalization and treatment for a mental disorder. ***In re Maricopa County Superior Court No. MH 2001-001139***, \_\_ P. 3d \_\_, 2002 WL 31121083 (Ariz. App., September 26, 2002).