

Nurse Hospital Negligent Care

Worker's compensation is the exclusive legal remedy for an employee's on-the-job accidental injury.

An employee cannot sue the employer or a co-worker for negligence for an accidental injury that arises out of and in the course of employment.

An exception exists for healthcare employees. They come under the dual capacity doctrine.

When a patient happens to be an employee of the healthcare provider, being an employee does not deprive the patient of the right to sue for professional negligence or malpractice in the course of treatment.

The dual capacity doctrine holds true even when the employee is a victim of negligence or malpractice while being treated for an on-the-job injury sustained while working for the same employer that then treats the employee.

However, the orthopedic charge nurse and the aide were not negligent just because the nurse fell after getting off the commode. There was no failure to follow the standard of care.

COURT OF SPECIAL APPEALS OF
MARYLAND, 1999.

A nurse slipped and fell while working in the operating room, fractured her femur and was admitted to the very same hospital for surgical repair which involved implanting metal fixation hardware.

After surgery she was admitted as a patient on the hospital's orthopedic unit.

Six days into her stay she fell while being assisted by an aide. She had rung her call bell and a nurse and the aide had assisted her out of bed to a bedside commode. They left the room to give her some privacy. She rang again and the aide responded. The aide went and got her walker because the patient said she was feeling light-headed. Acting alone the aide assisted the nurse to a standing position with the walker, then removed the commode, leaving the patient standing. In the fall she re-injured the femur fracture, necessitating a second surgery.

In the nurse/patient's lawsuit the Court of Special Appeals of Maryland discounted the hospital's argument that the hospital had a defense to liability under the worker's compensation laws. True, the nurse had no right to sue over the original injury, as it was fully compensable under worker's compensation. But that was not what the suit was about.

The court ruled a healthcare employee getting treatment from the employer has the same general right as any other patient to sue for professional negligence or malpractice. That generally holds true even if the underlying condition is a compensable industrial injury or occupational disease.

Beyond that, however, the court said the nurse and aide were not negligent just because the nurse fell. The charge nurse had the obligation to instruct and supervise the aide, but that hardly meant being physically present with the aide any time she was assisting a patient. The court ruled the aide was not negligent to leave the patient momentarily standing with her walker while pushing away the commode.

***Suburban Hospital, Inc. v. Kirson*, 739 A. 2d 875 (Md. App., 1999).**