

Nursing Professionalism: Court Sees Nurse As Independent Contractor, Legal Rights Not Limited By Workers Compensation Laws.

A registered nurse signed a contract with the management corporation for two adult group homes for professional services as a consulting nurse.

The nurse was attacked by a resident of one of the homes and filed a civil personal injury lawsuit against the management corporation for negligent supervision.

In general, an employee assaulted on the job by a patron can file for workers compensation, but, as with any other on-the-job injury, cannot sue the employer for negligence. The corporation argued for dismissal of the case on the grounds the nurse was a corporate employee.

The Court of Appeal of Louisiana, however, ruled the nurse was an independent contractor, not a corporate employee, based upon the professional nature of the services she performed. She could sue the corporation. An independent contractor can get workers compensation if he or she has a workers compensation account with a private insurer or the state fund.

No Right of Control

The corporation did not control or have the right to control the manner in which the nurse performed professional services. It could only opt to renew or not renew her contract based upon satisfactory or unsatisfactory performance.

The nurse used only her own discretion in deciding how to respond to health problems residents might have been having. She set her own hours. She had to review the charts monthly and write documentation on each resident, but was on her own when and how to do this. She was not precluded from working elsewhere while her contract was in effect, so long as she fulfilled her task-related responsibilities at the groups homes. She was paid a monthly fee. No state or Federal taxes were withheld from her compensation. The group home was not in the trade or business of providing healthcare services. **Mouton v. We Care Homes, Inc., __ So. 2d __, 2005 WL 2864226 (La. App., November 2, 2005).**