

Stress, Depression: Nurse Does Not Have Occupational Disease, Court Rules.

A nurse's depression or other mental or emotional problem from on-the-job stress may or may not qualify as an occupational disease for which worker's compensation benefits are available.

The key element is what it is about the nurse's job that causes the stress, according to a recent case from the Court of Appeals of North Carolina.

Generic Employment Issues Stress Not Characteristic Of And Peculiar To a Specific Occupation

The court looked at testimony from the patient's treating psychiatrist to pin down the actual sources of the stress she was experiencing. The psychiatrist noted several factors:

1. A demanding workload.
2. The lack of a support system at her employment.
3. Staffing decisions she considered unfair or discriminatory.
4. A perception she was undervalued.
5. Management restructuring and changes in hospital policies.
6. Changes in work shifts contributing to insomnia.
7. Anxiety over job security.

The court ruled none of these factors, although genuinely stressful, is characteristic or peculiar to nursing. All are stress factors common to many workplaces. Even if the employee's condition is truly genuine and actually disabling, stress from generic work stressors by definition cannot cause an occupational disease.

By contrast, the court pointed out that a legal case precedent has been established that a nurse suffering from stress from having to deal with suicidal and homicidal patients in the particularly chaotic environment of a psychiatric facility can develop a true occupational disease. (*PTSD: Court Upholds Work Comp Award For Psych Nurse Disabled By Migraines*, Legal Eagle Eye Newsletter for the Nursing Profession (11)10 Oct., '03 p.1.) *Lewis v. Duke University*, __ S.E. 2d __, 2004 WL 727034 (N.C. App., April 6, 2004).

Workers compensation is paid for occupational diseases just like on-the-job injuries, but only if the worker's condition meets the strict legal definition of an occupational disease.

An occupational disease is a condition that is characteristic of and peculiar to the specific occupation.

A condition found in the population in general or in workers in general is not an occupational disease.

An occupational disease can be a physical or a mental condition.

For a mental condition to qualify as an occupational disease it must be characteristic of and peculiar to a specific occupation.

A nurse who is exposed to special stresses like dealing with suicidal or homicidal patients in a psychiatric hospital, who develops post-traumatic stress disorder, has an occupational disease.

A nurse who has stress from problematic dealings with supervisors and co-workers does not have an occupational disease. That can happen in any job.

COURT OF APPEALS OF
NORTH CAROLINA
April 6, 2004

Blow-By Oxygen: Nurse Faulted For Neonate's Death.

In a very complicated wrongful death case the Court of Appeals of Arizona placed the blame squarely on the nurse and exonerated the physician from blame.

The baby was born slightly premature and was diagnosed with respiratory distress soon after delivery. The physician decided the best way to administer supplemental oxygen was to put in an endotracheal tube and then have a pure oxygen source placed near the tube so that the baby's own respiratory effort would draw in pure oxygen, pending a decision whether to put the baby on a respirator.

There is nothing inherently hazardous in administering blow-by oxygen to a newborn suffering from respiratory distress.

A physician when ordering blow-by oxygen is not expected to anticipate that other personnel will allow the oxygen source to flow directly into the newborn's endotracheal tube, hyperinflating the lungs.

COURT OF APPEALS OF ARIZONA
April 1, 2004

However, the nurse allowed the oxygen source and the endotracheal tube to come in contact, forcing gas into the lungs with no avenue of escape.

Hyperinflation of the lungs was ruled the cause of death. The hospital as the nurse's employer settled with the parents. The jury ruled the physician was not negligent. *Barrett v. Harris*, 86 P. 3d 954, 2004 WL 635663 (Ariz. App., April 1, 2004).