

## Worker's Comp: No Intentional Exposure Of Nurse To Danger.

When the nurse came on duty in the cardiovascular intensive care unit she was assigned to a new patient suffering from Rocky Mountain Fever.

The male patient stood 6'3" and weighed 350 lbs. The female nurse stood only 5'4". The nurse asked not to be assigned to him but was turned down.

The patient's illness made him prone to confusion. In fact, a few minutes after the nurse arrived the patient was up out of bed urinating on the floor as he had done earlier that day.

While the male nurse who had been caring for him and the newly-arrived female nurse were physically redirecting him back to bed the patient put the female nurse in a headlock and twisted her neck. That led to thoracic outlet syndrome, for which the female nurse sued her employer.

***An employee is normally not allowed to sue the employer for injuries sustained on the job, worker's compensation benefits being the exclusive legal remedy.***

***However, an exception exists which allows an employee to sue an employer who intentionally exposes the employee to danger.***

SUPREME COURT OF APPEALS OF  
WEST VIRGINIA  
April 10, 2015

The Supreme Court of Appeals of West Virginia dismissed the nurse's civil lawsuit and ruled that worker's comp benefits are her exclusive remedy for her injury.

Patient vs. nurse size difference alone does not necessarily imply danger to the nurse, the Court said. There was no prior behavior by this patient to put hospital staff on notice that he posed any risk of violence to his caregivers. The hospital did not intentionally expose this nurse to danger. ***Clark v. St. Mary's***, 2015 WL 1741444 (W. Va. App., April 10, 2015).

## Worker's Comp: Nurse Performing A Service For Her Employer.

An operating room nurse was required to change at the hospital into surgical scrubs to be worn on the job which were provided and laundered by the hospital.

However, as to the lab coat the hospital provided, it was her responsibility to take it home and wash it when it became soiled. She was also responsible for purchasing and maintaining suitable nursing shoes to wear on the job.

One day as the nurse was changing from her scrubs back into her street clothes and shoes in the hospital locker room she noticed that her lab coat and nursing shoes had blood on them that made them inappropriate to wear on the job. She stuffed them into a plastic bag to take them home.

In the parking lot she fell and was injured. She claimed that carrying the bag in a strong wind was a factor in her fall.

***Walking in the employee parking lot is normally considered a part of the employee's commute.***

***Mishaps during an employee's commute are not normally considered compensable under worker's compensation.***

COURT OF APPEALS OF OHIO  
April 16, 2015

The Court of Appeals of Ohio ruled the nurse was entitled to worker's compensation for her injuries from falling while walking in the employee parking lot.

The Court was mindful of the rule that an injury from an accident that occurs during an employee's commute normally does not "arise out of and in the course of employment" as that phrase is used in defining worker's compensation eligibility.

However, in this case at the moment she was injured the nurse was performing a service for her employer, taking her lab coat and shoes home to be washed. ***Kilbane v. Lutheran Hosp.***, 2015 WL 1737931 (Ohio App., April 16, 2015).

## Worker's Comp: Chemical Sensitivity Is Compensable.

One day while working at the hospital a nurse began having respiratory difficulties that sent her to the emergency department for a nebulizer treatment.

After two more such episodes that landed her in the emergency department for nebulizer treatments she quit work at the hospital and began seeing specialists.

Her pulmonologist diagnosed an asthmatic condition linked to occupational exposure to diisocyanate, a chemical component in the hospital's floor wax.

The only suitable employment the nurse could find afterward was a part-time position in a nursing home where diisocyanate is totally absent.

The position paid considerably less than she had been earning at the hospital.

***The nurse's respiratory problems have seemingly resolved, but only because she is no longer working in an environment where she is exposed to diisocyanate.***

***Her exposures at the hospital left her with a permanent asthmatic chemical sensitivity that has reduced her earning capacity, for which she is entitled to worker's compensation.***

COMMONWEALTH COURT OF  
PENNSYLVANIA  
March 25, 2015

The Commonwealth Court of Pennsylvania ruled the nurse is entitled to worker's compensation from the hospital where she was exposed to diisocyanate.

The nurse will be compensated for reduced earning capacity due to her permanent asthmatic condition that limits her range of occupational choices to environments without diisocyanate used in cleaning products or present in the building's paint or structural components. ***Little v. Worker's Comp. Bd.***, \_\_\_ A. 3d \_\_\_, 2015 WL 1313554 (Pa. Cmmwlth., March 25, 2015).