

# **“Willful Refusal” to Care for AIDS Patients**

written by Nancy Brent | May 26, 2016

## **Avoiding Liability Bulletin - November 15, 2014**

You may recall that [the last Bulletin discussed whether or not a nurse could refuse to care for a patient with the Ebola virus](#). Although the potential threat of contracting Ebola is “new”, the reactions to its presence and how health care providers responded to, and in some instances, continue to respond to, its threat is reminiscent of the responses to the HIV virus and the AIDS epidemic years ago. In fact, the following case illustrates several of the concepts presented in your last Bulletin.

A certified nursing assistant, who had worked for his employer for approximately 5 ½ months with geriatric patients, was re-assigned to another unit with three patients with AIDS. The nursing assistant informed his employer that he would not work with the AIDS patients because he was afraid he would get the virus and transmit it to his children.<sup>1</sup> The nursing assistant was fired for the refusal and he filed for unemployment compensation.

At the hearing, the nursing assistant testified that: (1) he was not told that there were AIDS patients on the unit he was transferred to; (2) he was not told to use additional precautions in the care of these patients; (3) he had never been specifically instructed in the care of AIDS patients and had only received “Universal Precautions” training; and (4) he was only provided rubber gloves for the treatment of these patients, which he testified that none of the other nursing assistances wore.<sup>2</sup>

The hearing referee held that the employer had met its burden of proving that the assistant’s refusal to follow the employer’s “reasonable directive” was willful conduct and therefore denied the assistant any benefits.

The assistant appealed the referee’s decision to the Pennsylvania appeals court, alleging that the ruling that his conduct was willful and therefore disqualified him for unemployment benefits.

The appeals court discussed the established legal definition of willful for purposes of unemployment benefits. The court described it as “the wanton and willful disregard of the employer’s interest, the deliberate violation of rules, the disregard of standards of behavior which an employer can rightfully expect from its employees, or negligence which shows culpability, wrongful intent, evil design or the intentional and substantial disregard for the employer’s interest or the employee’s duties and obligations.”<sup>3</sup>

The court emphasized its past rulings concerning an employee’s refusal to carry out an employer’s reasonable request and held that only when an employer directive threatens that person’s health or safety will a ruling occur that supports an employee’s refusal as not willful misconduct.

The court further emphasized that the assistant did receive Universal Precautions training and cited its contents as including the routine use of gloves, the transmission of the virus, the use of Personal Protective Equipment (PPE), and how to dispose of infectious waste. In addition, the training course emphasized that Universal Precautions should be used with every patient, since a health care worker could not know for sure if a patient had AIDS.

Insofar as the assistant's claim that no face masks, aprons or protective eye wear were provided, the court held that the duties he had in working with the AIDS patients were such that these specific PPEs were not necessary (e.g., he was not exposed to droplets of blood or splashes of blood). As the employer indicated, only rubber gloves were required to be used.

The court opined that the assistant's refusal to care for the AIDS patients was based on "unnecessary fears and misconceptions" about AIDS. This was a "subjective" belief only and, as such, does not constitute good cause for actions that would otherwise disqualify him from unemployment compensation.<sup>4</sup>

The court affirmed the referee's denial of unemployment benefits for the assistant.

Despite this case dealing with a denial of a claim for unemployment compensation and despite the year in which it was decided, it is an interesting one that has lasting principles that can be applied today in any case dealing with a refusal to care for a patient with a particular disease. One of those principles is that your subjective belief that a particular virus may be harmful to you or your family alone will not justify a refusal to care for a patient.

There must be clear support for such a refusal, such as inadequate or no PPE, a lack of training in the use of PPE, and not following guidelines from the CDC and state agencies. As was discussed in the last Bulletin, such a refusal is not only indefensible legally, it is also indefensible ethically.

A second long-standing principle is found in the dissenting opinion from one of the appellate judges. The nursing assistant testified that the employer told him he only needed rubber gloves to care for the AIDS patients. The dissenting judge emphasized that the policy in the nursing home required all PPE to be worn and all precautions to be followed with all patients, including AIDS patients. This judge would have ruled for the nursing assistant.

Although a dissent to the majority opinion, these points are well worth noting. If you are to follow CDC guidelines for Ebola, AIDS or any other infectious viruses, you must, and your employer must, expect that the guidelines are followed in full. In addition, it is the employer's duty to make available the protective gear and training that you need.

## **FOOTNOTES**

1. Dougherty v. Unemployment Compensation Board of Review, 686 A. 2d 53 (1996), 54.

2. Id.

3. Id.

4. Id., at 55.

**THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK ADVICE FROM A COMPETENT PROFESSIONAL.**