

Senior Living and Long-Term Care Blog

Perspectives on the legal trends, regulatory policy and other issues facing the senior living and long-term care industry



Judge Affirms OSHA Citation in Death of Healthcare Worker Killed by Mentally Ill Client

By Mark A. Lies, II and Craig B. Simonsen

An Occupational Safety and Health Review Commission Administrative Law Judge has determined that a healthcare provider company did not protect a social service coordinator, who was fatally stabbed outside her client's home in December 2012.

According to the OSHA [news release](#), the healthcare client had severe mental illness and a violent criminal history. The social service coordinator was on-the-job for approximately three months. The employee "had prior meetings with the man and recorded in her case notes that she was uncomfortable being alone with him."

While the Judge's decision is not yet available, the release indicated that a social service coordinator visited dangerous and violent clients in their homes and coordinated case management. To perform mental and physical health assessments, they would sometimes transport clients in their vehicle.

OSHA's [citation](#), including \$10,500 in proposed penalties, indicated that a serious safety violation was issued for exposing employees to incidents of violent behavior by a patient that resulted in death. "A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known." The Judge found that the healthcare company's approach to safety was inadequate, and that the company should have taken "precautions to prevent injury by hiring and training its employees appropriately."

This decision is very timely in view of another recent OSHA action relating to the healthcare industry. Last month [released](#) an "[Inspection Guidance for Inpatient Healthcare Settings](#)," that will focus its inspectors' attention to workplace violence, musculoskeletal disorders, bloodborne pathogens, tuberculosis, and slips, trips, and falls. The Guidance focuses on hazards that were included in OSHA's recently-concluded [National Emphasis Program](#) on Nursing and Residential Care Facilities, [CPL 03-00-016](#).

Particularly, the Guidance indicates that workplace violence (WPV) is defined as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty. OSHA notes that WPV is a recognized hazard in hospitals, and in nursing and residential care facilities. According to OSHA, in the healthcare and social assistance sector, 13 percent of the injuries and illnesses were the result of violence. "Fifteen percent of the days-away-from-work cases for nursing assistants were the result of violence." Accordingly, WPV will be evaluated in every inpatient healthcare OSHA inspection.

While the inspection Guidance is for "inpatient" healthcare settings, employers may be certain that they will also be inspected by OSHA inspectors as healthcare WPV incidents occur, regardless of the setting. The Guidance is effective

immediately. The Guidance noted that “because these hazards are nationwide, State Plans are expected to follow the guidance.”

Healthcare employers should take heed of this healthcare industry OSHA decision and the related Guidance. Special attention should be taken to update your policies, procedures, and training systems to include these topics in order to be inspection ready.

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