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AIDS Policy & Law

The Biweekly Newsletter on Legislation, Regulation and Litigation Concerning AIDS

Route to:

Volume 12, Number 14

August 8, 1997

Assisted Suicide

Florida Court Rejects Assisted Suicide For AIDS Patient

The Florida Supreme Court has refused to open the door to physician-assisted suicide, ruling that the state's interest in preserving life outweighed the privacy rights of a man dying of AIDS-related causes.

In a 5-1 ruling, the court reversed a Palm Beach County Circuit Court judge's decision granting **Charles E. Hall** the opportunity to die with the help of his doctor, **Cecil McIver**, at the time of his own choosing.

Hall's health had been failing when he sought the judge's permission in January 1997 to have his doctor administer a lethal dose of painkiller (see *AIDS Policy & Law*, Feb. 21, 1997, page 4). The decision was stayed when the state appealed.

Now Hall has no options left. The U.S. Supreme Court declared in June that there is no federal constitutional right to assisted suicide, and Hall is physically unable to end his life by himself.

Hall is bedridden and too weak to communicate. He is taking strong doses of morphine to control pain and sleeps most of the time, according to his attorney, **Florence Snyder Rivas of Rivas & Rivas** in Boca Raton. His death is imminent.

Hall's attorneys argued that assisted suicide was allowed under the privacy amendment to the Florida Constitution, which says that every person "has the right to be let alone and free from governmental intrusion into his private

(See **SUICIDE** on page 5)

New Jersey Allows Lawsuits Based on Reasonable Fear of HIV

Another court has advanced a new approach for determining whether plaintiffs can recover money damages from their fear of contracting HIV.

On the heels of recent rulings in Illinois, the New Jersey Supreme Court has held that a lawsuit may proceed even if no actual exposure occurred, but only if the fear is justified by what is publicly known about how HIV is transmitted.

The court steered a middle ground in the debate over how to deal with fear-of-AIDS claims.

The majority of state supreme courts that have addressed the issue limit emotional distress damages to cases in which plaintiffs can demonstrate they actually have been exposed to the virus, or can prove the existence of a medically recognized channel of transmission.

On the other hand are a handful of states that have adopted a "reasonableness" standard, allowing plaintiffs to recover emotional distress so long as their fears are genuine.

The New Jersey Supreme Court embraced the "reasonableness" standard, but included the caveat that a plaintiff must show that the fear was based on generally available public information about HIV transmission, not misinformation or hysteria.

(See **REASONABLE** on page 10)

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Volume 12, Number 13

July 25, 1997

Americans With Disabilities Act **Court Lets Plaintiffs Pursue Job Bias Claims While on Disability**

In two rulings that reject a prominent precedent, a federal appeals court has held that a person who files for disability benefits does not automatically forfeit the right to pursue an employment discrimination claim.

The U.S. Court of Appeals for the District of Columbia spurned the idea — advanced last year by the 3rd Circuit — that a person who loses his or her job must choose between receiving disability benefits or filing suit under the Americans with Disabilities Act or similar statutes.

Such a choice puts the employee in an untenable situation, the D.C. Circuit said.

"Claimants choosing benefits would sacrifice an opportunity for reinstatement while simultaneously shielding their employers from liability for allegedly lawful acts," **Judge David S. Tatel** said. "Individuals choosing instead to seek ADA relief would, by doing so, forego their entitlement to Social Security disability benefits. Nothing in either statute requires disabled individuals to make this choice."

The rulings, which involved one worker with spina bifida and another who could not walk easily, contradict the 3rd Circuit's ruling last year in *McNemar v. The Disney Stores Inc.*, which involved an employee with AIDS.

In *McNemar*, an employee who was fired applied for Social Security disability benefits. The 3rd Circuit invoked the

(See **DISABILITY** on page 10)

Government Urges Early, Aggressive Treatment of HIV

The long-awaited clinical guidelines from a government panel has ushered in a new era in HIV treatment — and a new batch of challenges for government and private policy-makers.

The guidelines, issued June 19 by a panel convened by the **Department of Health and Human Services** and the **Henry J. Kaiser Foundation**, recommend hitting HIV infection early and hard with a three-drug regimen that includes a protease inhibitor.

The panel calls for treating more people with more drugs at an earlier stage of infection. A diagnosis of AIDS is no longer the signal to begin antiretroviral therapy. Rather, the patient's viral load and CD4+ T-cell count should be monitored regularly to determine when to start the regimen.

The recommendations don't differ much from approaches already in use by physicians specializing in HIV disease, but they may im-

(See **TREATMENT** on page 12)

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AIDS Policy & Law

Route to:

The Biweekly Newsletter on Legislation, Regulation and Litigation Concerning AIDS

Volume 12, Number 10

May 30, 1997

Prisons

Judge Says D.C. Neglects HIV Care For Latino Prisoners

In a ruling that breaks new legal ground, a federal judge has ruled that a prison system violated the constitutional rights of Latino prisoners because it failed to furnish interpreters necessary for them to receive adequate medical care.

U.S. District Judge **Joyce Hens Green** said inmates who were unable to understand English were denied medical and mental health care in facilities run by the **District of Columbia Department of Corrections**.

Green specifically faulted the DOC's programs for HIV testing and counseling, saying the only counseling some Spanish-speaking inmates were receiving was the doctor's one-word diagnosis: "positivo."

The evidence was "replete with instances" in which prison officials exposed Latino inmates to "substantial risk of serious harm" by failing to provide interpreters, Green wrote in her 96-page opinion.

"It is difficult to conceive of an example of [a] medical care system that can be more deliberately indifferent than one in which illnesses are diagnosed and medication is prescribed based upon the patient pointing to a region of his or her body and saying the Spanish word for pain, 'dolor,'" the judge said.

Green's decision came after a five-day nonjury trial in a class-action lawsuit filed on behalf of Latino inmates by the

(See **PRISONERS** on page 8)

Court Says Jury Award Goes To Heir if the Plaintiff Dies

In a case involving a man who claimed AIDS discrimination in the workplace, the California Supreme Court has ruled that jury awards for pain and suffering survive plaintiffs who die while their cases are on appeal.

The high court overturned a 1996 Court of Appeal ruling that said awards for noneconomic damages need not be paid if the person who brought the lawsuit and prevailed at trial died before the appeals process was completed.

The decision may prove especially helpful to plaintiffs who sue employers or others for breaching the privacy of their HIV status. State law specifically allows for economic damages, such as lost wages, or punitive damages to be passed on to a plaintiff's heirs if the death occurs during the pendency of an appeal. As a result of the court ruling, heirs also may be able to collect damages juries award for emotional distress or humiliation.

The ruling involved the estate of the late **Joseph A. Sullivan**, who until his firing in 1991 was an office manager for **Delta Air Lines** in San Francisco. Sullivan alleged that the airline discriminated against

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- An analysis of HIV as a disability under the ADA.

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DEFINING "DISABILITY" UNDER THE ADA: An Analysis of 60 Decisions

by: Thomas D'Agostino, Esq.

Although its been over five years since the Americans with Disabilities Act was passed, the law still does not clearly define "disability." But to win an ADA case, the claimant has to prove that she has a disability.

This pamphlet reviews 60 cases, all reported in the *National Disability Law Reporter*, in which an employer challenged a claimant's status as a person with a disability under the ADA. Find out how the courts are interpreting disability law.

You'll get answers to the following:

- ◆ Who wins more cases — employee or employer?
- ◆ What are the most frequently litigated issues?
- ◆ Which states have been most active in this area?

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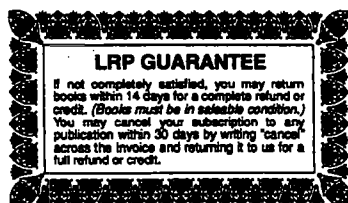
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Route to:

Volume 12, Number 8

May 2, 1997

Mandatory Testing **North Dakota Law Allows Confinement On HIV Suspicion**

Under a new law, people in North Dakota can be confined for up to five days while awaiting HIV testing if they expose a police officer, firefighter, paramedic or health-care worker to blood or body fluids.

Gov. Edward T. Schafer signed a bill April 9 that imposes the most stringent measures anywhere in the nation to help emergency service providers learn the HIV status of individuals they encounter while responding to crime and medical crises.

"Law enforcement is very much behind this law," said state **Sen. Darlene Watne**, R-Minot, the prime sponsor.

But civil liberties lawyers say the measure serves no legitimate public health purpose and is a serious violation of due process and the Fourth Amendment's guarantee against unreasonable searches and seizures.

"This is a dangerous bill. This amounts to police-state activity," said **Keith D. Elston**, director of the **American Civil Liberties Union of the Dakotas**, which is planning a legal challenge.

Since 1995, North Dakota can require a person to submit to HIV testing if he or she caused a "significant exposure" of blood or body fluids to a police officer, firefighter, emergency medical technician or others assisting in a medical emergency. The emergency worker had to seek a court order and demonstrate a "compelling need" for the test.

(See **CONFINEMENT** on page 10)

D.C. Hospital Must Pay \$400,000 For Forced Test and Denial of Care

Howard University Hospital in Washington, D.C., has been ordered to pay more than \$400,000 for conducting an HIV test on a patient without his consent and denying him access to psychiatric care.

The patient was a gay man who was taken to the hospital by ambulance after ingesting about 200 aspirin tablets in a suicide attempt. The hospital stabilized his medical condition, but, in a policy in effect at the time, it refused to admit him to the psychiatric ward unless he was proven to be free of infectious diseases.

Doctors assumed that because the patient was gay, he might have HIV. Against the patient's wishes, blood was drawn for an HIV antibody test, but the test was not conducted until after he left the hospital at his insistence.

The episode occurred in November 1987, but it was not until this April that the **District of Columbia Commission on Human Rights** ruled favorably on his claim. By then, the patient, known in official records as "John Doe," had been dead for two years.

(See **HOSPITAL** on page 8)

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By Kevin L. McCloskey, Ph.D., J.D.

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Route to:

Volume 13, Number 6

April 3, 1998

Public Opinion

African-Americans See Little Progress In Stopping Epidemic

Despite widespread concern about AIDS, few African-Americans are satisfied with the efforts government and community groups are making to curb the epidemic, a new survey shows.

One in two African-Americans questioned by pollsters for the **Kaiser Family Foundation** say they are "very concerned" about becoming infected with HIV, a level of worry that is twice that found in a previous national sample of all Americans.

They are more likely than Americans overall to know someone who is infected with HIV or has died from AIDS and to consider AIDS a more urgent health problem now than it was several years ago. Blacks are more likely to seek testing for HIV than Americans in general.

The survey finds that African-Americans are looking for answers and help on a practical level: how to talk with children and partners about AIDS, and where to go for testing and treatment.

But they aren't getting much help from government, schools or churches, according to the report, which was released March 17 as part of a conference at **Harvard University** on the problems AIDS poses to the black community.

"In my opinion, this survey suggests a disturbing need for more leadership within the African-American community — especially from ministers and other church leaders, medical professionals

(See **SURVEY** on page 10)

Texas Court Says Clinic Had No Duty To Warn Spouse About HIV

The Texas Supreme Court said a hospital bears no liability for not telling a woman that she was at risk for contracting HIV from her husband, who was exposed to the virus through a contaminated blood-clotting product.

In a unanimous opinion, the court held that the state's HIV testing statute bars the hospital from notifying a spouse based on a hunch that the patient carries the virus. The husband did not seek testing until he became ill with AIDS-related symptoms.

"The statute is clear that before test results can be released to a spouse, the patient must have tested positive," the court said in reinstating the trial court's grant of summary judgment to the hospital.

Linda Balderas Garcia alleged that **Santa Rosa Health Care Corp.** in San Antonio neglected to warn her late husband, **Adalberto Balderas**, that he might have contracted HIV from a blood-clotting product administered to control his hemophilia prior to April 1980.

By the mid-1980s, the hospital was aware that the dose of clotting product had been contaminated, according to evidence cited by the court. Between 1986 and 1989, the hospital sent Balderas seven

(See **SPOUSE** on page 8)

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