

Medical News

EDITED BY GINA PUGLIESE, RN

Court Rules on Applicability of OSHA's Bloodborne Pathogen Rule on Dental Practice, Home Healthcare Settings, and Temporary Staffing

A divided federal appeals court upheld OSHA's Bloodborne Pathogen Standard's applicability to three employee groups -- dentists, temporary medical personnel, and home health employers. The petitioners argued that OSHA's rule failed to establish a significant risk within their respective disciplines, failed to result in substantial benefit to healthcare workers, and lacked concern for protecting the consumer (dental patients and home healthcare patients), eg, by increasing healthcare costs.

The American Dental Association (ADA) represented dentists in the case, and the Home Health Service and Staffing Association (HHSSA) represented both of the other groups. Medical personnel firms supply healthcare workers on a temporary basis to hospitals and nursing homes, while home health firms supply such workers to patients at home.

The ADA specifically questioned the burdens of the 30-year recordkeeping requirements, the high laundering cost for reusable personal protective clothing not being included in OSHA's feasibility analysis, and the difficulty of complying with postexposure procedures. One issue raised by the HHSSA was the lack of employer control over the work environment in the home.

Two of the three judges disagreed with the petitioners and supported OSHA's rule, saying it is reasonable and is able to materially reduce the bloodborne pathogen risk to healthcare workers.

Although the main bloodborne pathogen rule was upheld, the court did vacate the rule, in part, as it applied to work sites not controlled by the employer, citing the branch of industry that supplies medical personnel to the home rather than those employers that supply medical personnel to hospitals, nursing homes, and other facilities that are required to comply

with the rule. Although this would not affect compliance with the parts of the rule related to providing hepatitis B vaccination, postexposure testing and treatment, and recordkeeping, the court said it would affect, for example, the employer's ability to comply with providing personal protective equipment and clothing.

In a dissenting opinion, Judge Richard Coffey argued that it is improper for OSHA's rule to apply uniformly to all settings since the risk of exposure is vastly different among various disciplines. He characterized the rule as being an attempt to "kill a fly with a sledgehammer" and that it was drafted partially in response to "public hysteria surrounding AIDS, created by the media's failure to balance their reporting with scientific data on transmission." Further, "The rule unduly burdens healthcare employees, including but not limited to dentists, doctors, and hospitals, while offering minimal benefit to their employees."

FROM: American Dental Association and Home Health Services and *Staffing Association, Inc. v Martin* (nos. 91-3865 and 92-1482), Seventh Circuit Court of Appeals, Jan. 28, 1993.

Joint Commission Will Begin Unannounced Surveys

The Joint Commission on Accreditation of Healthcare Organizations soon will begin unannounced surveys of randomly selected accredited organizations to better gauge and ensure compliance with commission standards. The new survey process is likely to begin in July 1993, pending approval of the commission's executive committee. The survey will be conducted at the midaccreditation point of a 5% sample of all organizations, including hospitals, that participate in the three-year accreditation process. The one-day survey will focus on five performance areas in which hospitals generally have the most problems with compliance-safety management, life safety, medical staff appointments and privileging, infection control, and governance.