

PROFESSIONAL ISSUES

A. Bully case verdict a warning to doctors

1. An Indiana jury handed a six-figure award to a perfusionist, but the physician accused of bullying is appealing the verdict.

By [Damon Adams](#), AMNews staff. April 18, 2005.

When a jury recently ordered an Indiana heart surgeon to pay \$325,000 to a hospital employee on a claim of "workplace bullying," experts who have studied the subject said it was a significant decision in a growing, yet murky, area of law. The case may make physicians re-examine how they interact with co-workers as the courts begin to legally define what constitutes workplace bullying.

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For physicians, there remain plenty of unanswered questions: Would an employee consider a doctor a bully for yelling at him or her while the doctor is trying to save a patient's life in the emergency department? Or is that considered acceptable behavior in a hospital during a stressful situation?

Workplace analysts and health care attorneys are not predicting a wave of bullying-related lawsuits based on the Indiana case. But they say it might embolden employees to take action if they believe they are receiving rude and abrasive treatment.

"[This case] does have real implications for how doctors treat their co-workers. It sends a message to doctors that if you step over a certain line of decency, you could find yourself in trouble," said David Yamada, professor of law at Suffolk University Law School in Boston and director of the school's Project on Workplace Bullying and Discrimination.

In the Indiana lawsuit, filed in 2002, Joseph E. Doescher claimed that Daniel H. Raess, MD, yelled at him on Nov. 2, 2001, when both worked at St. Francis Hospital and Health Centers in Beech Grove, Ind. The suit said Dr. Raess, a heart surgeon at St. Francis, came toward Doescher, a perfusionist, who backed up and put out his hands to protect himself. The hospital was not named in the suit.

Kevin Betz, Doescher's attorney, called in an expert witness to testify it was a bullying incident. "[Doescher] was severely depressed and unable to go back to work" after the incident, Betz said.

In March, a jury in Marion (Ind.) Superior Court ordered Dr. Raess to pay \$325,000 to Doescher, who no longer works in health care. Attorneys for Dr. Raess said he is a good physician who was victimized. And if it can happen to him, it can happen to any physician, said Kelly Eskew, one of his attorneys. Eskew said Dr. Raess is not a bully and there was no pattern of that behavior. Dr. Raess is appealing the verdict. "This is a case that sets a terrible precedent," Eskew said. "They basically awarded \$325,000 to a guy because he and [Dr. Raess] got into a shouting match, and that's all there is to it."

2. Defining workplace bullying

Experts say the case should prompt hospitals and physicians to re-evaluate what is appropriate behavior in the health care setting.

"It's really important to let people know you have a [conduct] policy. With work force shortages, you can't afford to lose a nurse or another staff member" because of a disruptive physician, said Alan Rosenstein, MD, vice president and medical director of VHA West Coast in Pleasanton, Calif.

Health care attorneys say labor laws cover abusive behavior and discrimination, but workplace bullying is an emerging area that has yet to be clearly defined by courts. "What you're seeing is workplace bullying being a catch phrase for things that have existed for some time," such as abusive behavior, said Lori-Ann Rickard, a health care attorney and president of Rickard & Associates, a law firm in Michigan that specializes in health care.

According to researcher Loreleigh Keashly, PhD, workplace bullying is "a persistent form of hostility. It's frequent and enduring over a long period of time." Dr. Keashly, associate professor of urban and labor studies at Wayne State University, co-authored a 2004 Michigan study that found 14% of workers experienced bullying.

Some states have introduced legislation on workplace bullying. A Washington bill would define the issue, encourage employers to enact policies on bullying and set aside money to study the matter. Hawaii's proposal would define workplace bullying and spell out legal recourse for employees.

Some legal experts say health care institutions are potential hotspots for bullying because of the hierarchical structure, and cite research in which medical school students said they were harassed or abused by instructors and supervisors. AMA policy says medical staffs should develop and adopt bylaw provisions or policies for intervening in situations where a doctor's behavior is disruptive.

Rickard said there is a growing recognition among administrators and managers that hospitals and physician offices must abide by laws that require certain levels of behavior. But the matter is complicated because many physicians at hospitals are independent contractors not bound by normal employee policies.

Attorney D. Michael Reilly said that although some behavior may be viewed as disrespectful, it isn't illegal. "Just because you have some yelling, that doesn't make it a cause of action. That's not bullying," said Reilly, chair of the labor and employment group at Lane Powell law firm in Seattle.

In the end, legal and workplace experts say the Indiana case will prompt some health care professionals to re-evaluate their work behavior. "The more notoriety the case gets, it puts hard-core bullies on notice," said Bradley Richardson, a workplace analyst and recruiter specializing in health care for Kaye/International in Dallas. "If they look at a \$325,000 [verdict], they're going to think twice about it."

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(1) ADDITIONAL INFORMATION:

3. What is bullying?

Researchers and health care attorneys say workplace bullying is a vague legal area that is hard to define. Nonetheless, here are some behaviors that could indicate bullying on the job:

- Persistent hostility toward an employee.
- Behavior that occurs on more than one occasion and continues over time.
- Aggressive behavior that interferes with an employee's work production.
- Regular verbal attacks toward one employee but not others.
- Physical threats on numerous occasions.
- Yelling or shouting in a hostile manner.
- Violations of conduct standards spelled out by employer.

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4. Case at a glance

John E. Doescher v. Daniel H. Raess, MD

Venue: Marion (Ind.) Superior Court

At issue: Whether a surgeon bullied a perfusionist during a 2001 incident at an Indiana hospital where the two worked. A jury said yes.

Potential impact: Workplace analysts and health care attorneys say the case might embolden employees to take legal action against physicians whom they believe are treating them rudely and abrasively.

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