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Court Rejects HIV-Positive Surgical Technician

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An operating-room surgical technician employed by a medical center in Michigan was asked to submit to HIV testing. The technician refused testing; when he also refused to accept an alternative accommodating position at the hospital, he was laid off.

The federal district court dismissed the plantiff's Americans With Disability Act claim and Rehabilitation Act claim, finding that the technician's HIV-positive condition disqualified him from working as a surgical technician and that he was not "otherwise qualified" to perform his job. The technician acknowledged that his position required him upon occasion to place his hands upon and into surgical incisions and that this put him at risk for needlestick or laceration injuries. However, the technician presented expert testimony asserting that the risk of transmission of HIV was so slight as not to justify his exclusion from surgery.

The court agreed with the medical center that there was a real possibility of transmission of HIV, and, because the consequence of transmission is death, the nature, duration, and severity of the risk outweighed the fact that the chance of transmission was small. The court also ruled that the risk could not be eliminated without removing the technician from the operating room. Moreover, because the ability to assist the surgeon was an essential job function, the medical center was not required to alter the position to accommodate the technician.

FROM: *Mauro v Borgess Medical Center,* No. 4:94-CV-05 (WD MI, S Div 1995).

https://doi.org/10.1017/S0195941700008250 Published online by Cambridge University Press