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## Court victory sets new precedent on health care workers discrimination

by Eric Ferrero  
 Special to Q-Notes

EUGENE, OR — A federal court decision reinstating an Oregon ski patroller who was fired for refusing an HIV test will strengthen legal protections for health care workers and others whose employers overreact to remote risks of HIV infection, the American Civil Liberties Union said today.

"This is a victory for science over fear," said Matt Coles, Director of the ACLU AIDS Project. "The court found that there was no real risk of transmission from emergency health workers — and that in the absence of real risk, there could be no discrimination."

A US District Court judge in Eugene ordered the man reinstated May 11, ruling that a ski resort violated the *Americans with Disabilities Act* by removing the patroller from its slopes when he refused to take an HIV test once his supervisors learned that his wife has AIDS.

The ACLU AIDS Project represented the ski patroller, who was identified in court papers as "John Doe." In 1996, when he refused to be tested for HIV, he was taken off of his regular patrol duties and assigned to plow snow in the parking lot during the graveyard shift.

Based on extensive medical evidence the ACLU presented during a trial in the case earlier this year, US District Judge Michael Hogan found that workers who are the first to respond to the scene of a medical emergency pose no significant risk of infecting others with HIV.

"At best, [the ski resort] has proved only a remote risk to others," Hogan wrote. "This does not demonstrate the significant risk required" under the *American with Disabilities Act*.

The decision will be one of the strongest tools yet in protecting a range of health care workers who often face discrimination from employers who fear that any risk of transmission - however small - forces them to remove employees from their medical duties.

"We've been trying to get a decision like this for more than 15 years," Coles said. "Emergency medical care is one of the last bastions of blatant job discrimination based on HIV. This ruling tells every health care company and medical supervisor in America, that no significant risk means just that. You can't escape the law by saying you just want to play it safe. No real risk means no discrimination."

Jennifer Middleton, a Lambda Legal Defense & Education Fund attorney who argued the case while at the ACLU, said the decision is also important because it takes away employers' ability to hide behind HIV tests.

"The ski resort took the patroller off the slopes because he wouldn't provide an HIV test. That's treating him as if he had HIV, the court decided, so the same 'no risk, no discrimination' rule applies," she said. Middleton added that the decision is important because it makes it clear that the *Americans with Disabilities Act* protects you if you are discriminated against because someone in your family has HIV.

The ski resort has not indicated whether it will appeal the decision, which orders Doe reinstated for the next ski season. The lawsuit did not seek monetary damages or any other penalty from the resort. ▼

### Widow

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Gardiner's prior sex change would not be recognized, ruling that Gardiner's marriage with Marshall Gardiner was invalid because she was born a male and marriages between people of the same sex are not legal in Kansas.

The Kansas appeals court reversed that decision. Recognizing the "diverse composition of today's families," the court noted that biology is "no longer the sole organizing principle" of American family life.

The case now is remanded to the trial court with instructions to consider carefully the scientific research and J'Noel's sexual identity to determine the validity of her marriage. ▼



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