

Doe vs. University of Maryland Medical System Corporation
United States Court of Appeals, Fourth Circuit, 1995
50 F.3d 1261

John Doe, M.D. (Dr. Doe) appeals a decision of the district court granting summary judgment to University of Maryland Medical System Corporation (UMMSC) on his claims under the Rehabilitation Act and Title II of the Americans with Disabilities Act. The district court reasoned that Dr. Doe, who is a carrier of the human immunodeficiency virus (HIV), is not an otherwise "qualified individual" with a disability. Because we agree with the district court that Dr. Doe poses a significant risk to patients at UMMSC that cannot be eliminated by reasonable accommodation, we affirm.

The material facts are undisputed. When the events leading to this lawsuit began to unfold, Dr. Doe was a neurosurgical resident at UMMSC in the third year of a six-year training program. In January 1992, Dr. Doe was stuck with a needle while treating an individual who may have been infected with HIV, the virus which causes Acquired Immune Deficiency Syndrome (AIDS). Dr. Doe subsequently tested positive for HIV. Upon learning that Dr. Doe was HIV-positive, UMMSC suspended him from surgery pending a recommendation of its panel of experts on blood-borne pathogens. The panel recommended that Dr. Doe be allowed to return to surgical practice with the exception of certain specific procedures involving the use of exposed wire, which the panel deemed to involve too great a risk of transmission of HIV to patients. In addition, the panel suggested that certain restrictions be placed on Dr. Doe, including requirements that he rigorously follow infection control procedures; that if Dr. Doe's blood ever contacted a patient's non-intact skin he notify his supervisor, UMMSC's Infection Control Office, and the patient; and that Dr. Doe provide a specimen of his blood so that in the event a patient claimed to have contracted HIV from Dr. Doe, the DNA of the two viruses could be compared. However, the panel did not recommend that Dr. Doe be required to obtain the informed consent of his patients before performing surgical procedures.

After careful consideration and further study, senior administrators at UMMSC rejected the recommendations of the panel. Instead, UMMSC permanently suspended Dr. Doe from surgical practice and offered him alternative residencies in non-surgical fields. After Dr. Doe refused the alternative residencies and insisted that he be reinstated with full surgical privileges, UMMSC terminated him from its residency program.

Dr. Doe primarily argues that the district court erred in granting summary judgment to UMMSC on his claims which prohibit discrimination against an otherwise qualified individual with a disability (Rehab. Act & ADA). In order to establish a violation of either of these statutes, a plaintiff must prove: 1) that he has a disability, 2) that he is otherwise qualified for the employment or benefit in question, and 3) that he was excluded from the employment or the benefit due to discrimination solely on the basis of the disability. Regarding the second requirement, an individual is not otherwise qualified if he poses a significant risk to the health or safety of others by virtue of the disability that cannot be eliminated by reasonable accommodation.

UMMSC argues that Dr. Doe poses a significant risk because 1) HIV may be transmitted via blood-to-blood contact in a surgical setting, 2) Dr. Doe will always be infectious, 3) infection with HIV is invariably fatal, and 4) there is an ascertainable risk that Dr. Doe will transmit the disease during the course of his residency. Moreover, UMMSC asserts, the risk of injury from needles and other sharp instruments cannot be eliminated through reasonable accommodation; therefore, neither can the risk of infection.

We hold that Dr. Doe does pose a significant risk to the health and safety of his patients that cannot be eliminated by reasonable accommodation. Although there may presently be no documented case of surgeon-to-patient transmission, such transmission clearly is possible. And, the risk of percutaneous injury can never be eliminated through reasonable accommodation. Thus, even if Dr. Doe takes extra precautions some measure of risk will always exist because of the type of activities in which Dr. Doe is engaged. We therefore conclude that Dr. Doe is not an otherwise qualified individual with a disability under the Rehabilitation Act and the ADA.