

# Poisoning a Coworker is Outside the Scope of Employment, California Court Rules

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A California Court of Appeal has ruled that a medical staffing company was not vicariously liable for its medical assistant who poisoned a coworker while on assignment at a hospital. [Montague et al. v. AMN Healthcare, Inc.](#), No. D063385 (Cal. Ct. App. Feb. 21, 2014). The Court found the medical assistant's "highly unusual and startling" actions occurred outside the scope of her employment and affirmed summary judgment in favor of the staffing company.

## Background

AMN Healthcare, Inc., dba **Nursefinders**, is a staffing company that provides medical personnel to hospitals and other medical facilities. Nursefinders hired Theresa Drummond as a medical assistant and assigned her to a hospital where she worked with Sara Montague, another medical assistant. While on assignment, Drummond and Montague disagreed over stocking the storerooms and misplaced lab slips. Montague did not consider these disagreements serious and never reported them to her supervisor or anyone else.

A few weeks after the disagreements, Drummond purportedly poured carbolic acid into Montague's water bottle, which Montague had left at work. After Montague drank from the contaminated bottle, her throat and tongue started to burn and she vomited.

Montague sued Nursefinders for negligence. She argued the company should be held vicariously liable for Drummond's actions, as well as for negligent training. Nursefinders asked the trial court to dismiss Montague's claims. The trial court granted the motion and Montague appealed.

## Applicable Law

An employer is vicariously liable for the torts of its employees committed within the scope of the employment. However, the plaintiff bears the burden of proving the employee's wrongful act was committed within the scope of his or her employment. An employer is liable for an intentional tort of its employee if the employee's act has a "causal nexus to the employee's work."

## Company Not Liable

Montague argued that Nursefinders should be held liable for Drummond's poisoning of her because Drummond's action arose out of their work-related disputes. The appellate court disagreed. It found significant that Montague presented no evidence that past work-related disputes, rather than Drummond's personal animosity toward her, motivated Drummond's actions. Indeed, the Court pointed out the two alleged disputes between the employees occurred weeks before Drummond poisoned Montague's water bottle. Further, Montague did not consider the disagreements serious, as she never complained about them. Construing the facts most favorably to Montague, the Court concluded Nursefinders could not be held vicariously liable for Drummond's wildly idiosyncratic behavior in poisoning Montague.

Montague also contended the company should be held liable for negligent training of Drummond. The Court assumed, without deciding, the company had a duty to train its employees regarding the avoidance of workplace violence. However, it ruled Montague's claim failed because the company, in fact, trained Drummond on the avoidance of workplace violence. It also decided Montague's claim was speculative and not reasonably deducible from the evidence. The Court stated, "Montague's argument appears to be that because Nursefinders trained Drummond on avoiding workplace violence and the incident occurred, this evidence supports an inference that Nursefinders must have breached its duty to train Drummond in avoiding workplace violence and this breach caused her injuries." It found Montague's claim could not survive summary judgment "simply because it [was] 'possible' that Nursefinders breached a duty to provide training regarding the avoidance of workplace violence and that this breach 'might have' caused her injury." Accordingly, the Court dismissed Montague's negligent training claim.

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