

Freedom Of Speech: Court Turns Down Nurse's Lawsuit.

After working three years in the operating room a nurse was told she was being transferred to a med/surg floor where she would have to work a fluctuating schedule of twelve hour shifts.

The nurse believed that when she was hired her arrangement with the hospital was that she would be working a regular forty hour week, eight hour shifts five days a week, as an accommodation to her responsibilities as a single mother.

A written letter of protest followed in which the nurse accused her supervisors of bullying and harassment. The letter sparked the nurse's termination.

The nurse sued her former employer, a hospital district that was basically a state governmental agency, alleging violation of the nurse's First Amendment right to Freedom of Speech.

There is no question here that the content of the nurse's written grievance did not address a matter of public concern.

UNITED STATES DISTRICT COURT
IDAHO
March 31, 2014

The US District Court for the District of Idaho agreed in principle that public employees have First Amendment rights, but the First Amendment gives them legal protection only when they speak out on matters of public concern.

A matter of public concern is an issue about which information is needed or appropriate to enable members of society to make informed decisions about the operation of their government.

On the other hand, individual personal grievances have no relevance to the public's evaluation of the performance of governmental agencies and are generally not of public concern.

The Court dismissed the nurse's lawsuit. ***DeYoung v. Weiser Valley Hosp. Dist.***, 2014 WL 1323631 (D. Idaho, March 31, 2014).

False Claims Act: Nurse Did Not Have Proof Of False Medicaid Billings, Lawsuit Dismissed.

The US False Claims Act empowers private citizens to sue on behalf of the US Government to recoup funds wrongfully obtained by false or fraudulent billings submitted to the Government.

The private citizen is entitled to keep a certain percentage of the legal recovery. In some cases that has been millions of dollars.

However, in this case the nurse was required to substantiate precisely her allegations of false or fraudulent billing of Medicare or Medicaid by her employer.

The nurse set out in detail her allegations of substandard patient care.

But then the nurse went on simply to say in general terms that Medicaid was nevertheless billed a daily rate for the residents' care.

That statement is not precise enough to support a claim that any specific false or fraudulent claim was submitted for Government payment.

The nursing facility pointed out that it does not bill separately for reimbursement for routine costs such as bed alarms or abdominal binders.

UNITED STATES DISTRICT COURT
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Triggered by the nurse's complaints, the nursing facility was inspected by the state department of health, and the nurse was fired the very next day.

A high fall risk resident who was supposed to have a bed alarm tried to reach the restroom, fell and died hours later. The nurse was told to falsify her report to state that the bed alarm was in use and sounded but when the nurse responded the resident was already on the floor.

Afterward the nurse surveyed the facility on her own and found that only one of twenty-eight residents who had orders for bed alarms actually had a bed alarm. The bed alarms she was able to turn up were broken or were missing batteries, connection cords and sensor pads. Despite this, the facility's nursing assistants were routinely flow-charting every shift that alarms were in use and working. The nurse informed the director of nursing about everything she had found.

A month later another resident fell without a bed alarm. The nurse repeated her same survey of the facility and found basically the same thing, only one of twenty-six who were supposed to have bed alarms had a working alarm. This time she notified the state department of health by email and in a letter.

Later a resident who was supposed to have an elopement bracelet nevertheless eloped and was gone for hours. The nurse also observed that some residents who were supposed to have abdominal binders for their feeding tubes did not have them.

Court Finds No Basis For Nurse's False Claims Act Lawsuit

The US District Court for the District of New Jersey found that the nurse was unable to pinpoint any specific false or fraudulent claim billed to Medicare or Medicaid. Her US False Claims Act lawsuit was fatally flawed.

According to the Court, bed alarms and abdominal binders are not billed separately. Although it may well have been substandard care, the lack of bed alarms did not involve false or fraudulent billing. ***Portilla v. Riverview***, 2014 WL 1293882 (D. N.J., March 31, 2014).