

# Sexual Abuse: Nurse Must Report, Cannot Suffer Retaliation From Employer.

A nurse with almost thirty years of professional experience was working the night shift in a nursing home.

Early in the morning an elderly female dementia patient told her that a certain male CNA had entered her room that night and exposed himself. The nurse told the CNA to stay out of her room the rest of the shift and began phoning her supervisors at home for guidance what to do next.

The problem was twofold. The resident had a lengthy history of complaints of sexual misconduct against her male caregivers, none of which to date had ever been substantiated. The CNA in question had a lengthy history of service with no blemish on his record.

Staff had already taken the stance that the resident in question was not credible and was not to be believed. The nurse, however, believing it was her legal duty, interviewed the resident, charted what she had to say and wrote an incident report relating it at face value, even though she, like the others, did not actually believe it herself.

The nurse was fired the next day for insubordination. She sued for retaliation. The Court of Appeals of Texas upheld a civil jury's verdict awarding her monetary damages from the nursing home but not from the nursing home's parent corporation.

## **Subjective Belief is Not Relevant To Duty to Report**

The basis for the court's ruling was that the law that mandates reporting of sexual abuse by caregivers does not say the duty to report exists only when the caregiver subjectively believes the alleged victim's complaints can be substantiated.

Nor does the law say protection for caregivers against retaliation for doing their legal duty as they understand it, to report any patient's complaint of abuse, exists only when they themselves actually believe it. Town Hall Estates-Whitney, Inc. v. Winters, \_\_ S.W. 3d \_\_, 2007 WL 416325 (Tex. App., February 7, 2007).

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***A nurse is, by law, a mandatory reporter of sexual abuse of any patient under the nurse's care.***

***A mandatory reporter of sexual abuse faces a myriad of legal repercussions for failing to report.***

***The other side of the coin is that a mandatory reporter of sexual abuse cannot suffer retaliation from his or her employer for fulfilling the reporter's legal duty.***

***The abuse-reporting statute is silent on the relevance of whether the reporter subjectively believes the alleged victim.***

***That is, there is no exception to be found in the law to the mandatory duty to report when the caregiver thinks the victim's allegations of abuse are the product of malice, dementia or delusion.***

***Likewise, there is no exception to be found in the law to a mandatory reporter's right to be free from retaliation even when the reporter himself or herself has reason not to believe and does not believe what the alleged victim is saying.***

COURT OF APPEALS OF TEXAS  
February 7, 2007

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