

Accusations Of Narcotics Diversion: Court Must Look At Agency Nurse's Legal Rights.

Hospital management detected that narcotics had come up missing during the night shift while an agency nurse was on duty.

The hospital chose to solve the problem simply by telling the staffing agency not to send the nurse back to the hospital and not to send her to work at any other facilities associated with the hospital's parent corporation.

The allegation of narcotics diversion was turned over to the state pharmacy board for investigation. However, after the nurse passed a polygraph examination the pharmacy board dropped its investigation.

The staffing agency offered the nurse work assignments at other facilities in the city not associated with the same hospital or its parent corporation.

The nurse declined the offer and sued the hospital and the staffing agency.

The Court of Appeals of Ohio ruled there was no basis for her lawsuit.

To explain its ruling the court looked at the legal rights possessed by agency nurses *vis a vis* their agencies and the client healthcare facilities where they are assigned to work.

With any legal contract comes a duty of good faith and fair dealing.

However, there was no contract between the agency nurse and the hospital.

The contract was between the agency and the hospital. The contract gave the hospital the right to dismiss any agency nurse at the hospital's discretion, with or without cause.

The agency nurse's contract with the agency stated expressly that she agreed to be treated as an at-will employee, meaning the agency had no obligation to provide her with employment or to try to continue an assignment terminated by a client facility.

The agency offered the nurse other assignments. The agency did not have to go to bat for her to get her reinstated at the facility where she wanted to work.

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Agency nurses do not have employment-contract rights with the facilities where they work. Agency nurses are employees of their agencies, not the facilities where they work.

Courts are imposing basic duties on employers above and beyond the details expressly spelled out in formal employment contracts and union collective bargaining agreements to act in good faith when dealing with their own employees. When an employee is suspected or accused of misconduct the employer must investigate, take corrective action short of termination and terminate the employee only if it is necessitated by blatant misconduct on the employee's part.

On the other hand, contracts between staffing agencies and client facilities typically give the facility wide latitude to discontinue a nurse's services at any time at the facility's discretion. In this case the hospital was not required to investigate any further or consider corrective action to resolve the situation. The hospital had the right to resolve the suspicions of its managers by simply getting rid of the nurse in question in a very abrupt manner.

Nevertheless this wide latitude given to facilities to choose whom to keep and whom not to keep does not go so far as to allow a facility to discriminate on the basis of race, gender, national origin, age, disability, pregnancy, etc. Nursing agencies' client facilities are bound by anti-discrimination laws just as if they were employers, but that was not an issue in this case. ***Dunina v. Lifecare Hospitals*, 2006 WL 1529475 (Ohio App., June 2, 2006).**