

## Off-Duty Assault By Hospital Employee: Court Upholds Hospital's Right To Fire For Cause.

A hospital's housekeeping supervisor with twenty-five years service pled guilty to felony aggravated assault charges for going to her husband's alleged lover's residence and slashing her with a box cutter. She was placed on four-years probation by the criminal court.

Then she was fired from her job at the hospital. She contended her conduct was not connected with her employment and thus did not justify termination from the hospital.

***A hospital's policy against inflicting harm to persons is fundamental to its health care mission.***

***An off-duty aggravated assault by a hospital employee is misconduct connected with the employee's work at the hospital, and is so serious as to warrant termination for cause.***

SUPREME COURT OF TEXAS, 1998.

The Supreme Court of Texas disagreed. It ruled a hospital is justified in enforcing a personnel policy that prohibits malicious or destructive acts harmful to persons by hospital employees, whether such acts occur on or off the hospital premises or during or outside working hours.

A hospital is entitled to believe that a person capable of such an act poses a threat to patients' safety and could compromise the hospital's duty to insure its patients' welfare. Collingsworth General Hospital v. Hunnicutt, 988 S.W. 2d 706 (Tex., 1998).

## Neglect Of Nursing Home Resident: Charges Upheld Against Nurse's Aides.

***State regulations define the term neglect as the failure to supply a long term care resident with the care, food, clothing, shelter, health care, supervision or other services which are necessary to maintain the resident's mental and physical health.***

***While the definition of neglect is broad and general and does not provide any specific examples of what actions may constitute neglect, the definition does provide a sufficiently definite warning as to the prohibited conduct when measured by common understanding and practices.***

***The definition of neglect is clear enough to give warning that it is neglect to leave a resident unattended in a whirlpool bath with scalding water and then not report the change in the resident's condition to the nurse in charge when the resident is burned.***

***The standard of conduct for a charge of neglect adopted in the regulations is not unconstitutionally vague. There is no merit to the argument the regulations are unconstitutional.***

SUPREME COURT OF MISSISSIPPI, 1998.

Two certified nurse's aides were disciplined for leaving a resident unattended in a scalding whirlpool bath, and for not reporting to the charge nurse that the skin was beginning to peel off her legs where she had sustained second-degree burns in the hot water.

The Supreme Court of Mississippi ruled it was appropriate to remove their names from the state roster of certified nurse's aides who were permitted to work as patient caregivers, and to place them on the roster of persons found guilty of patient abuse or neglect.

The court considered but was not persuaded by the aides' arguments their constitutional right to due process of law was violated because state regulations did not more clearly define the term "neglect of a long term care resident."

The two aides put the resident in a hot whirlpool bath, one of them having tested the temperature of the water with her double-gloved hand. Then she was left there while one went to look for some soap.

When they got her out of the bath they noticed one of her toes was bleeding and the skin on her lower legs was beginning to peel. They discussed it but decided not to report it to the charge nurse.

When a nurse came to the resident's room to reapply dressings to her decubitus ulcers, the nurse noticed the problem and set things in motion to have her transported to the hospital for care of second-degree burns.

The court ruled both aides were at fault, even though one only helped transport the resident to the whirlpool, then assisted in getting her back to her room, but was not directly responsible for her being left in the hot water unattended. That aide noticed the resident's legs were blistering and peeling, and had an obligation to report this significant change in the resident's condition, even though she was not directly at fault for causing the problem.

Molden v. Mississippi State Department of Health, 730 So. 2d 28 (Miss., 1998).