

LEGAL EAGLE EYE NEWSLETTER

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Cell-Phone Photo Of Patient: Hospital Had Grounds To Fire Employee, Court Rules.

An emergency department patient technician was assigned to monitor a psych patient who had been placed in restraints in the E.R. due to intoxication and combative behavior.

The patient requested the technician remove his urinary catheter. While removing the catheter the tech became concerned over what he considered to be an excessive amount of tape that was used to secure the catheter tubing to the patient's upper thigh.

He believed this constituted mistreatment and he wanted to bring it to the attention of hospital management. He asked the charge nurse if he could use his personal cell phone to take a picture of the patient's leg and the tape. He was told, "just go ahead and deal with it," which he interpreted as permission to go ahead. He got verbal permission from the patient and took the picture.

After he showed the cell-phone picture to the emergency department nurse manager a meeting was scheduled with the nurse manager and a representative from hospital human resources.

Instead of hearing out his concerns over mistreatment of the patient they told him he was being terminated for unauthorized use of his personal cell phone and potentially bringing on liability against the hospital.



A healthcare provider can fire an employee for violating patient confidentiality while trying to alert a patient or others to a potential mistake.

Hospital policy was that employees absolutely were not to take cell-phone pictures of patients, but if necessary to use the hospital's Polaroid camera after the patient signed the hospital's consent form.

COURT OF APPEALS OF OHIO
May 13, 2011

The tech sued the hospital for wrongful termination, claiming the reasons given for his termination were pretexts for retaliation against him for trying to document and expose mistreatment of a patient.

The Court of Appeals of Ohio refused to see the tech's lawsuit against the hospital as a whistleblower situation and affirmed the lower court's dismissal of the case.

A hospital employee has no right to violate patient confidentiality while trying to alert a patient or others to something the employee believes is a case of legal liability against the hospital, the Court ruled.

The hospital was on solid legal ground, the Court went on, to have a policy which flatly outlawed employees from photographing patients with their personal cell phones, based on the hospital's strict legal obligation to protect patient's privacy rights.

If a patient needed to be photographed for treatment purposes the hospital's policy required use of the Polaroid camera kept in the E.R. and required the patient to sign the legal form for waiver of privacy rights provided by the hospital for that purpose before being photographed. ***Strodbeck v. Lake Hosp., 2011 WL 1944187 (Ohio App., May 13, 2011).***

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