

## Patient's Charts: No Place For Employee's Complaints.

A hospital social worker was hired to counsel patients with dual diagnoses of mental illness and chemical dependency.

Only seven weeks into her employment she was terminated for falsifying a patient's chart. The New York Supreme Court, Appellate Division, found sufficient grounds and upheld her termination.

The social worker noted in a patient's chart the patient was not getting his therapy sessions because the social worker was too overworked to be able to see him.

First, the court said, that was false. Any false statement in a patient's chart is potentially detrimental to the patient.

Second, the statement was potentially detrimental to the hospital as it could expose the hospital to liability and be used against the hospital in a court of law.

Third, patients' charts are not the place for caregivers to express complaints to their supervisors about staffing or other employment issues, even if their complaints are legitimate. Claim of Rice, 735 N.Y.S.2d 637 (N.Y. App., 2001).

## Mental Abuse: Court Uses Objective Standard, Subjective Effect On Patient Irrelevant.

***In this case an aide used a vulgar term for a resident's genitals while cleansing her perineal area.***

***It is not necessary to delve into the mental state of the patient in question. Whether or not she was offended or distressed is not relevant.***

***To determine if mental abuse occurred the issue is not whether the act in question had an adverse effect on the patient in question.***

***The issue is whether the act in question would tend to have an adverse affect on a reasonably alert and cognizant patient.***

***Any alert and cognizant nursing home resident who is helpless and vulnerable while receiving perineal care would be expected to suffer some degree of mental distress from a personal caregiver using such offensive language.***

SUPREME COURT OF CONNECTICUT,  
2002.

A nursing assistant used a vulgar term for the resident's genitals while cleansing her perineal area. The aide was found guilty of abuse. She appealed all the way to the Supreme Court of Connecticut, which upheld the finding of abuse.

### Intent

Intent is a necessary legal element of abuse. However, the law looks for intent to commit the act, not intent for the act to have a harmful effect. The aide intended to say exactly what she said. Perhaps she meant no harm, but that is immaterial.

### Mental Abuse / Objective Standard

The courts use an objective standard to determine if mental abuse has occurred. The courts look at whether a reasonably alert, oriented, sentient and cognizant patient would suffer mental distress from the conduct in question.

In this case, the court ruled it is objectively abusive for a caregiver to use vulgar and offensive language while performing a patient's most intimate personal care.

That means it is not relevant to delve into the particular resident's mental state to see if the resident in fact suffered harm. This resident testified in a statement that she was deeply offended, but that was irrelevant. The court did not have to decide if this particular resident was offended to any degree to rule that abuse occurred.

### One Episode Sufficient

The court had no problem ruling that just one objectionable abusive episode is enough to discipline a personal care worker. Salmon v. Department of Public Health, 788 A. 2d 1199 (Conn., 2002).

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