

## Chemical Dependency Treatment: Patient Has No Right To Sue For Invasion Of Privacy, Court Says.

After being discharged from a chemical dependency treatment program the patient sued the facility for invasion of privacy.

The patient's lawsuit objected to the facility's policy of requiring random drug and alcohol screening for patients, the facility's policy of allowing patients to use the facility's computers only in accordance with the facility's guidelines, and the facility's practice of video surveillance of public areas of the facility.

The US District Court for the District of South Dakota dismissed the case.

### **Invasion of Privacy**

#### **Reasonable Expectation of Privacy**

The law allows civil lawsuits for invasion of privacy, defined as wrongful intrusion into another person's private activities in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.

The touchstone of unreasonable intrusion upon another person's privacy or seclusion is that person's reasonable expectation of privacy, according to the Court.

No reasonable expectation of privacy is violated when a patient voluntarily consents to random drug and alcohol screening as a condition of voluntary admission for chemical dependency treatment. Nor is such screening inherently unreasonable or grounds for a lawsuit.

Likewise, before using the facility's computer the patient signed a copy of the facility's guidelines which expressly stated that computer use would be monitored, that downloading pornography was prohibited and that computer use would be terminated if the guidelines were violated.

The computer-use guidelines were essentially an addendum to the contract for voluntary treatment and removed any expectation of privacy as to the patient's use of the computer.

The facility's video surveillance did not intrude into the patient's room, where it might have actually invaded his privacy, but only monitored hallways, exits and other public areas in which there was no reasonable expectation of privacy. **Gates v. Black Hills Health**, 2014 WL 317362 (D.S.D., January 28, 2014).

***The patient signed a treatment contract in which he expressly agreed to submit to random drug and alcohol screening.***

***He now disagrees with the facility's drug and alcohol screening policy, but the patient was free to weigh the benefits of chemical dependency treatment against the burden of random drug and alcohol tests and decline treatment.***

***Because he freely chose to consent to the drug and alcohol tests those tests necessarily are not an unreasonable intrusion upon his personal privacy.***

***Similarly, before using the facility's computer, the patient signed off on the facility's guidelines for computer use by patients which stated in bold capital letters that computer use would be monitored and that access would be terminated if he did not adhere to the facility's computer guidelines.***

***Under these circumstances the patient had no reasonable expectation of privacy that accessing pornographic materials on the computer would go undetected by the facility and would not result in consequences.***

UNITED STATES DISTRICT COURT  
SOUTH DAKOTA  
January 28, 2014

## Alcohol/Drug Dependency: LPN's License Revoked.

An LPN went through chemical dependency treatment only months before and then again shortly after getting her license in 1989.

After her second stint in treatment she practiced as an LPN for twenty-two years with no problems until she voluntarily admitted herself to a psychiatric facility after an intentional overdose of Xanax.

An addiction specialist diagnosed her with major depressive disorder and alcohol, benzodiazepene and cannabis dependency and reported her to the State Board.

The Board's Nurses Assistance Program offered her its standard three-year recovery monitoring agreement to let her keep her license. The LPN entered the program but soon balked at the idea of staying three years on the grounds that she was only a social drinker and marijuana user.

She dropped out of the program and her license was revoked.

***There is no legal requirement for the State Board to justify its decision to revoke an alcoholic or addicted nurse's license with direct evidence that the nurse's ability to care for patients is affected.***

COURT OF APPEALS OF INDIANA  
December 27, 2013

The Court of Appeals of Indiana ruled that the State Board was justified in imposing terms upon the LPN's license and revoking her license for failure to comply with those terms, only with satisfactory evidence that the nurse was then currently dependent upon alcohol and/or drugs.

The fact of current dependency being established, it was not necessary for the Board further to justify its decision with direct proof that the LPN's ability to care for her patients was affected by that dependency. **Davis v. State Bd. of Nursing**, 999 N.E. 2d 473 (December 27, 2013).