

# Chemical Dependency: Hospital Not Required To Accommodate Restrictions Re Narcotics, No Disability Discrimination.

After she was fired for diverting narcotics a nurse reported herself to the state department of health.

The department set up a supervised-access plan she and any subsequent employer had to follow for 2000 hours to ensure that she practiced safely with regard to accessing and dispensing narcotics.

For her next new job she provided the hospital's occupational health department with a medical history candid in all respects except for her background with narcotics.

Six weeks into her new job, a staff nursing position in pediatric intensive care, she informed occupational health for the first time that she was fired from her last position for theft of narcotics and had practice restrictions from the state department of health.

## **Employer Chose Not To Accommodate Nursing Practice Restrictions**

When her supervisors learned all the details they believed supervised access to narcotics would basically mean another nurse would have to shadow her at all times.

Supervised access was not feasible. The unit's pediatric patients needed their routine narcotics on schedule and could require emergency narcotics at any time. A child would not notice or be a good historian for missed medications or other irregular conduct by a nurse. The private rooms on the unit were ideal for an impaired nurse to hide devious activities from other staff.

The US Court of Appeals for the Eighth Circuit supported the hospital's decision to terminate the nurse rather than accommodate her practice restrictions. That is, the hospital did not commit disability discrimination, the court said.

It did not sway the court's decision that two other hospitals did subsequently hire the nurse and did agree to accommodate her restrictions. **Dovenmuehler v. St. Cloud Hosp.**, \_\_ F. 3d \_\_, 2007 WL 4233160 (8th Cir., December 4, 2007).

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***Chemical dependency is recognized as a disability under the Americans With Disabilities Act (ADA).***

***The ADA only protects an employees from discrimination who is successfully rehabilitated and no longer abuses drugs.***

***Illegal conduct, that is, use of illegal drugs or illegal abuse of legal drugs, is not conduct for which the ADA requires reasonable accommodation or permits a disability discrimination lawsuit.***

***Strictly speaking, a narcotics abuser who was never chemically dependent cannot qualify for consideration as someone who has successfully recovered from chemical dependency.***

***The nurse in this case drank socially, smoked tobacco and was diagnosed with cocaine dependency which was in remission.***

***After she reported herself for diversion of Vicodin she was diagnosed as an abuser, not as someone having a full-blown opiate narcotic dependency.***

UNITED STATES COURT OF APPEALS  
EIGHTH CIRCUIT  
December 4, 2007

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