

## Chemical Dependency: Court Defines Nurse's Employer's Duty Of Reasonable Accommodation.

***Does this nurse have a disability?***

***Being a successfully rehabilitated substance abuser fits the legal definition of being disabled.***

***The nurse had a history of substance abuse. She was in a monitoring program with the state board.***

***After her addiction had been in remission for a time she drank socially and diverted some Vicodin.***

***At that point it was not relevant whether the nurse was at one time successfully rehabilitated.***

***Once someone resumes actively abusing drugs or alcohol, the ADA regulations say the person no longer fits the definition of disabled.***

***Does the hospital have to provide reasonable accommodation?***

***In her particular clinical setting the hospital was not able to monitor her access and use of narcotics other than by placing her under continuous observation by a second nurse.***

***Continuous observation would not be a reasonable accommodation.***

UNITED STATES DISTRICT COURT  
MINNESOTA  
November 30, 2006

The courts often look at disability discrimination cases from more than one angle to reach the result that is deemed appropriate. A recent case from the US District Court for the District of Minnesota, involving a chemically dependent hospital staff nurse, is a good example.

The nurse had a history of substance abuse and was being monitored by the state board. She was caught again diverting narcotics and admitted to drinking alcohol socially. She was fired.

She was hired at a second hospital without revealing her drug-use history or the fact she was in a monitoring program. When it came to light, the hospital decided it did not have the resources to provide the supervision she required to maintain staff-nurse employment and fired her.

She sued the second hospital for disability discrimination. The court dismissed her case.

### **Chemical Dependency**

#### **Reasonable Accommodation**

First of all, with recent substance abuse this nurse would not be considered a disabled person.

Second, even if a nurse whose problem is presently in remission is deemed to be a successfully rehabilitated substance abuser, that is, a disabled person, it is still an open question in each case whether the employer can monitor the nurse.

The court noted that a healthcare employer is not necessarily obligated, under the rubric of reasonable accommodation, to provide the monitoring that an employee with a drug or alcohol history needs in order to retain his or her license or to practice without undue risk of diversion.

In this case the second hospital believed the neonatal intensive care unit was an ideal environment for diverting narcotics, that is, it was not safe not to have constant one-on-one observation by another nurse, and that sort of accommodation would be unreasonable for the employer. **Dovenmuehler v. St. Cloud Hosp., 2006 WL 3463394 (D. Minn., November 30, 2006).**