

Defamation / Wrongful Discharge: Verdict Awarded To Nurses Wrongfully Accused.

Two LPN's were fired from a long-term care facility over allegations made against them by CNA's who worked with them.

One nurse was accused of failing to chart a fall by a specified resident an aide claimed she witnessed. The other was accused of verbally abusing a resident and of failing to give another resident her prn pain medication when the CNA reported to the nurse the resident needed it.

After both nurses were terminated the grounds for their terminations were reported to the state office of long-term care and to the local police department.

Complained of Improper Patient Care Prior to Termination

The Court of Appeals of Arkansas pointed out that prior to their terminations each nurse had voiced concerns to the facility's director of nursing over improper patient care by the facility's aides. The court did not elaborate on the nature of the nurses' complaints about the aides or comment on whether they were valid.

Verdict Upheld

Defamation / Wrongful Discharge

The nurses sued the nursing home corporation and the director of nursing.

The jury awarded the nurse who had allegedly failed to chart a resident's fall \$67,740 for wrongful discharge and \$200,000 for defamation.

The other nurse, accused of verbally abusing one resident and failing to give another her prn medication was awarded \$65,000 for wrongful discharge and \$15,000 for her attorney's fees.

The Court of Appeals of Arkansas upheld the verdict.

Whistleblowers

Caregiving Occupations

Nurses and others who work with vulnerable populations like nursing home patients are required by law to report actual or suspected abuse.

Their employers are strictly forbidden to retaliate against them for fulfilling their legal and moral responsibilities in this area.

Nurses and other employees of long-term care facilities are expressly required by law to report actual or suspected patient abuse or neglect.

Actual or suspected abuse or neglect must be reported to the long-term care facility's administration and to state authorities if nothing is done about it.

No owner or administrator of a long-term care facility can discriminate, retaliate or seek reprisals against a resident or an employee of a long-term care facility who initiates or cooperates with steps taken to investigate or remedy abuse or neglect of a patient.

Making false allegations against a nurse of professional negligence, such as incomplete charting or failing to give meds, is one form that illegal retaliation or reprisals can take.

Legal damages for defamation and wrongful discharge can include loss of income from denigration of a nurse's reputation.

Legal damages can also include compensation for emotional harm and depression, whether or not professional help has been sought.

COURT OF APPEALS OF ARKANSAS
May 28, 2003

Editor's Note: State statutes and common law court precedents across the nation support whistleblowing caregiving employees. However, nurses must be cautioned that US states vary widely on a spectrum from employee-friendly to employer-friendly in respect to how whistleblowing caregivers are protected by law.

That is, employee-friendly states protect employees who so much as verbally threaten to go to state authorities over abuse or neglect. In another state jurisdiction it may be necessary to file a signed written report with state authorities before the employee is considered a whistleblower who can sue for defamation and wrongful discharge.

The complaint must involve illegal abuse or neglect of a vulnerable person, not just a personal difference of opinion on nursing-care policies.

The complaint of abuse or neglect must have come *before* adverse employment was taken or the employee is not really considered a whistleblower.

Compensation for Damages

A nursing home consultant, licensed administrator and former director of nursing testified as an expert witness that she would not hire either of the nurses.

The nurse awarded \$65,000, who actually was hired somewhere else, testified she suffered from depression and had come to doubt herself as a nurse.

The other nurse, awarded \$267,740, had not been able to find employment.

Privileged Communication

The court did point to the other side of the coin. Facilities are immune from lawsuits after they make good-faith reports of abuse or incompetence to the state registry of caregiving employees. Good faith means there was no malice or ulterior motive and the facility made a reasonably thorough investigation before reporting and firing the employee. The court commented the facility's lawyers should have at least tried to make this argument. ***Northport Health services, Inc. v. Owens*, __ S.W. 3d __, 2003 WL 21223999 (Ark. App., May 28, 2003).**