

Narcotics Diversion: Court Says DON Can Be Liable For Nurse's Family Member's Murder.

The civil lawsuit was filed by an adult son alleging that his father was murdered by the father's wife. The lawsuit alleged he was killed by administration of lethal doses of drugs, including po morphine, which the father's wife diverted from her employment as a nurse at a nursing home.

At this stage the US District Court for the Western District of Kentucky has only put aside a legal technicality and has not yet reached the ultimate issue of liability.

The lawsuit was filed against the corporation which owns the nursing home and against the nursing home's director of nursing.

The corporation is not a citizen of Kentucky. As an out-of-state corporation, if it were the only legitimate defendant, it would have the right to remove the lawsuit from Taylor County, Kentucky, Circuit Court to the Federal District Court for the Western District of Kentucky.

However, the nursing home's DON is a citizen of Kentucky. Since the lawsuit alleges valid grounds against her as a legitimate co-defendant along with the corporation, the family is entitled to its day in court before a hometown jury in Taylor County against both defendants.

Illicit Use of Narcotics

Foreseeable Consequence of Diversion

A healthcare facility's director of nursing has a legal duty to implement protocols and supervise the storage, maintenance and destruction of controlled medications used at the facility.

Breach of that legal duty can be the basis of a civil negligence suit by or on behalf of a person who was harmed as a foreseeable result.

To be considered foreseeable it is not necessary to be able to forecast the specific event that occurred. It is sufficient if some injury to some person can be anticipated to result from a breach of the healthcare professional's legal duty.

It came to light through an internal audit at the facility that there were major discrepancies in the storage and wasting of controlled substances, including morphine.

For the family to get a jury verdict in their favor they still have to make their case to the jury by bringing in experts to show the standard of care as defined by State regulations, to prove that those standards were violated and to convince the jury that violation of those standards caused the man's death. **Wise v. Extendicare, 2013 WL 495408 (W.D. Ky., February 7, 2013).**

Narcotics Diversion: Court Sees Grounds For Nurse's Termination For Employee Misconduct.

An LPN was fired after an investigation that was started after a routine audit of controlled substances.

The investigation revealed that the nurse failed to account for medications on six occasions.

The nurse withdrew a 5 mg dose of methadone and failed to document whether it was given to the patient, returned or wasted.

She removed 10 mg of oxycodone and failed to account for it.

She removed two 5 mg doses of oxycodone and documented only one dose being given to the patient.

Another 10 mg of oxycodone was not accounted for.

Two 5 mg oxycodones were withdrawn but only one was accounted for.

Two 10 mg methadone tablets were withdrawn and not accounted for.

It could not be proven that the nurse diverted narcotics for her own personal consumption, but that was not the relevant issue.

The nurse was terminated for discrepancies between the specific medication dosages she withdrew from the dispenser and the medications she documented were given to her patients.

She was guilty of misconduct justifying her termination for cause.

COURT OF APPEALS OF MINNESOTA
January 22, 2013

The Court of Appeals of Minnesota ruled her termination was justified.

Her responsibilities as an LPN included accurate documentation of administration to patients or return or wasting of her medications.

She was given a copy of the facility's policies during her employee orientation and periodically advised in writing of changes. An employer has the right to expect that an employee will abide by the employer's policies.

The Court discounted the LPN's argument that she was not adequately trained, finding that not credible.

She was not given any warning prior to her termination, but being a nurse she was not entitled to a warning that failing to document medications is a serious violation of nursing standards. **Jewett v. Healtheast, 2013 WL 216398 (Minn. App., January 22, 2013).**