

Narcotics Diversion: Court Sees A Pattern Of Misconduct, Throws Out Nurse's Wrongful Discharge Lawsuit.

The Supreme Court of Vermont found there was sufficient evidence to terminate a hospital staff nurse's employment for just cause.

The court stated that hospitals have the ultimate responsibility for patient care and thus have the right to set their own standards for medication administration.

The courts do not second-guess a hospital's standards for medication administration after a nurse sues for wrongful termination. Nurses must submit to supervision on this issue.

A Pattern of Errors With Narcotics Is A Patient Safety Issue

When one nurse's pattern of administering narcotics differs significantly from the nurse's coworkers caring for the same types of patients on the same unit, it is strong circumstantial evidence of diversion and abuse of narcotics.

However, diversion and abuse of narcotics does not have to be proven to discipline a nurse, the court pointed out, because faulty medication practice in and of itself is a patient safety issue.

While apparently over-administering prn narcotics the nurse actually often gave prn Tylenol instead of prn Percocet, according to verified complaints from patients. The nurse kept up the pattern after being warned she needed to obtain approval from the charge nurse whenever she medicated a patient for pain.

Employment at Will

The nurse had no employment contract and was not working under a collective bargaining agreement.

Still, the hospital's employee handbook and past practices set expectations that employees would not be terminated without going through progressive discipline. The court ruled this nurse was properly warned and was offered remedial supervision before she was fired. Delude v. Fletcher Allen Healthcare, Inc., __ A. 2d __, 2002 WL 1396873 (Vt., June 28, 2002).

There was no direct eyewitness evidence that the nurse was diverting narcotics to her own use.

However, a medication and narcotic audit performed by the hospital's chief pharmacist, the vice president of nursing, the head of human resources and the unit nursing manager found the nurse's narcotics practices differed significantly from all the other nurses on her unit.

Letters of understanding were issued to her before she was terminated.

She was told her narcotics administration patterns were out of line with those of her coworkers. She was told to obtain approval from her supervisor whenever she administered narcotics. She was told that further complaints from patients could lead to termination.

Her deviant pattern continued with narcotics. She continued to give more Percocet than all the other unit nurses combined. She refused to seek approval from her supervisors before giving narcotics. Patient complaints continued.

SUPREME COURT OF VERMONT
June 28, 2002

Narcotics Diversion: Court Upholds Board Of Nursing.

In an unpublished opinion, the Court of Appeals of Iowa ruled the state board's strict rules on wastage of controlled substances were in accord with accepted nursing standards and violation of the rules was sufficient grounds to suspend or revoke a nurse's license.

Minimum standards of acceptable and prevailing nursing practice require competent documentation by a nurse of wastage of controlled substances.

When all or part of a dose is wasted the nurse must document the patient's name, amount wasted, the reason for the wastage and get the signature of the nurse who witnessed the wastage.

COURT OF APPEALS OF IOWA
July 3, 2002

The nurse was accused of failing to conform to minimum standards of practice and of diverting narcotic medications from patients to her own use.

The accusation of narcotics diversion could not be proved and it was dismissed.

However, although diversion and abuse were strongly suspected, it did not have to be proved to discipline the nurse.

Improper documentation of narcotics wastage, missing witness signatures, supposedly broken ampules and syringes not being turned in, counts not being done or documented or turning up wrong, etc., are serious violations of rules for patient care and legal grounds for disciplinary action, the court said, even if diversion and abuse of narcotics cannot be proved. Matthias v. Iowa Board of Nursing, 2002 WL 1429951 (Iowa App., July 3, 2002).