

LEGAL EAGLE EYE NEWSLETTER

July 2003

For the Nursing Profession

Volume 11 Number 7

Employment References: Court Rules That Nurse Cannot Sue For Defamation.

A registered nurse voluntarily resigned from the hospital's neonatal intensive care unit. Ten days later she put in an employment application at a nursing agency.

The agency required her to send her former employer a form entitled "Confidential Reference Check Report." The form asked her former supervisor to check boxes for "Above Average," "Average" or "Below Average" in eight categories: performance, adaptability, judgment, dependability, cooperation, initiative, personality and attendance.

The form also asked the former supervisor to state whether or not he or she would rehire the applicant.

The form included an authorization for the applicant to sign stating, "I hereby authorize the addressed individual [supervisor] to furnish an employment reference verification/evaluation to [agency] and do hereby release both parties from any and all liability for damages in the furnishing and receiving of this information."

The nurse signed the authorization and sent the form to her former supervisor, who checked "Average" for the first three categories, "Below Average" for the remaining five and indicated she would not rehire her.



By signing the agency's employment-reference authorization form the nurse expressly authorized her former employer to fill out the form.

Furthermore, the nurse expressly gave up the right to sue her former employer for checking the boxes on the form in a way that indicated a substandard evaluation of her competency as a nurse.

COURT OF APPEALS OF INDIANA
June 3, 2003

Defamation Lawsuit Dismissed

The nurse's application sat at the agency for eight months and she was not offered any work. She sued the hospital and her former supervisor for defamation. The Court of Appeals of Indiana dismissed her lawsuit.

Information about an individual's current or past employment is by law strictly confidential. However, when an individual expressly authorizes release of confidential information there is no right to turn around and sue for defamation, slander, libel, invasion of privacy, etc., if the information is not favorable and it hurts the individual's ability to obtain employment.

Former Supervisor Stayed Within the Scope of the Authorization

The court made a very important point: The authorization signed by the applicant only authorized the supervisor to check the boxes on the form, and that was all the supervisor did.

The form did not authorize the supervisor to discuss the applicant or to volunteer written comments beyond what the form asked for. The supervisor and the hospital would have been legally liable if the supervisor had done that. ***Eitler v. St. Joseph's Regional Medical Center***, __ N.E. 2d __, 2003 WL 21267125 (Ind. App., June 3, 2003).

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