

## Refusal Of Illegal Act: Termination Upheld.

An LPN was terminated from her position in a nursing home after she refused to go through with what she considered to be an illegal act she was told by her supervisor to perform.

The LPN was told to get one dose of Dilaudid ready for a cancer patient to take with him the next morning when he left the facility for an out-of-town medical appointment. That is, the LPN was told to put one pill in a plastic baggie.

The LPN phoned the director of nursing and other supervisors to complain. She believed that it was not appropriate for a patient to take Dilaudid without being under direct nursing supervision.

She also believed she would be practicing illegally as a pharmacist without a pharmacy license by packaging and dispensing medication and, further, that the medication had to be labeled in compliance with the state's pharmacy-practice act and not just put in an unmarked plastic bag.

The LPN sued for wrongful discharge after her termination.

### **Employee Cannot Be Forced To Commit an Illegal Act**

The Court of Appeals of Michigan agreed with the underlying premise that an employee cannot be terminated for refusing to perform an illegal act, even a so-called employee at will who has no employment contract or vested union rights.

However, it is not illegal under state or Federal law for a nurse to permit a patient to self-medicate, if the nurse first obtains an order from the physician allowing the patient to do so.

The LPN should have phoned the physician for an order. That was what she was first told when she raised her legitimate concern that there was no order.

Further, there was no legal basis for the LPN's subjective belief that the pill had to be dispensed by a pharmacist and labeled in compliance with the state pharmacy-practice law, the Court went on to say.

What the LPN was told to do, assuming a physician's order was obtained ahead of time, was not an illegal act. **Bonds v. Laurel Health Care**, 2010 WL 1629622 (Mich. App., April 22, 2010).