

Nursing Home Resident Funds: Reimbursement Questioned.

The nursing home's policy allowed an employee to purchase items like drug-store sundries, fast-food meals and clothing for a resident and obtain reimbursement out of the resident's funds.

However, receipts were to be submitted to the administrator's office so that a check could be issued to the employee. Employees were not to obtain any funds whatsoever directly from residents.

During a routine spend-down audit it was discovered a \$100 check had been written by the resident to an employee on an account the resident kept herself. The employee was fired and reported for abuse.

Nursing home employees are required to follow state law and the nursing home's own internal procedures for getting reimbursement for personal items purchased for residents.

However, when the employee has not taken advantage of or stolen from the resident there are no grounds to report the employee for abuse of a vulnerable person.

MISSOURI COURT OF APPEALS
May 20, 2003

The Missouri Court of Appeals upheld the firing but ruled that since there was no actual misappropriation funds there was no legal basis to report the individual to the state registry for abuse of a resident.

A state law was violated that required any payment over \$10 by a resident to an employee to be reported in writing to the administrator, but that also did not warrant reporting her to the registry for abuse. Wells v. Dunn, ___ S.W. 3d ___, 2003 WL 21145844 (Mo. App., May 20, 2003).

Jail Nursing: Deliberate Indifference To Inmate's Serious Medical Needs.

Nurses working in correctional facilities can be sued and often are sued by prisoners for denial of medical care while incarcerated.

A nurse can be guilty of violating a prisoner's Constitutional rights if the nurse is deliberately indifferent to the prisoner's serious medical needs.

Deliberate indifference to a prisoner's serious medical needs is considered a violation of the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the US Constitution.

A separate issue is that medical care, including receiving attention from the jail nurse, cannot be withheld as a disciplinary measure to punish an inmate for unacceptable conduct.

Inmates have the right to freedom of speech to complain about jail conditions. They are allowed access to their legal representatives and to the jail law library.

No jail personnel, medical or non-medical, can retaliate against an inmate for exercising his or her rights.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
June 4, 2003

Nurses working in correctional facilities increasingly are becoming targets of lawsuits filed by inmates.

Inmates will often name as defendants all the persons perceived as authority figures involved in the inmate's incarceration, all the way from the governor and the superintendent of corrections to the jail guards and the jail nurse. The majority of these lawsuits are dismissed as unfounded.

However, the US District Court for the Southern District of New York recently handed down a ruling that the defendant nurses were guilty of deliberate indifference to the inmate's serious medical needs, which is the catch phrase for alleging a violation of an inmate's Constitutional rights by jail medical personnel.

Inhibitors Withheld from HIV+ Inmate While in Disciplinary Segregation

The inmate was sent to the Special Housing Unit for eight days as punishment for violation of jail rules.

In fact, the court decided, the inmate was the target of retaliation by the jail guards for voicing complaints about jail conditions.

While in disciplinary segregation the inmate did not receive his protease inhibitors from the nurses. His HIV+ status and his consequent need for his inhibitors was a serious medical need, the court reasoned, because of the potential for the progression of the virus to outrun the progress of his therapy during such an interval while he was not taking his inhibitors.

The court did not believe the nurses had the same retaliatory motive withholding his inhibitors that the guards had sending him to disciplinary segregation.

Nurses cannot withhold attention or care to an inmate even for a non-serious medical need as a disciplinary measure, and the nurse's motive in holding back care is not relevant if there is deliberate indifference to serious medical need, the court said. Soto v. Iacavino, 2003 WL 21281762 (S.D. N.Y., June 4, 2003).