

Medication Error: Court Approves Nurse's Firing.

An LPN was fired from her position in a nursing home after she transcribed via the facility's computer system a telephone order into a resident's chart from the resident's physician for 5 mg of sublingual Roxanol q 4-6 hours prn for pain as 5 ml instead of 5 mg.

The Roxanol at the facility in po liquid form contains 20 mg of morphine per ml.

5 ml of liquid Roxanol contains 100 mg of morphine, twenty times the 5 mg sublingual dose of morphine prescribed for the patient.

When confronted about the error the LPN told her charge nurse she thought a ml and a mg were basically the same thing.

COURT OF APPEALS OF OHIO
February 27, 2012

The Court of Appeals of Ohio ruled the nursing home had legal grounds to terminate the LPN for cause, that is, the LPN was not entitled to unemployment benefits.

The Court said it was not a factor in the LPN's favor that her charting error was discovered through the facility's own internal system of checks and balances before any actual harm occurred to a patient.

The LPN was not entitled to progressive discipline, that is, a write-up and plan of correction before being fired, as her error was so severe that it amounted to a violation of the law.

By law all medications must be administered according to the physician's directions and, by law, an LPN is required to have at least baseline competence in the administration of medications.

Error Could Have Killed the Patient

The magnitude of the error, which could have caused a patient's death, justified the decision to terminate her for cause, the Court concluded. ***Hale v. Dept. of Job & Family Services***, 2012 626261 (Ohio App., February 27, 2012).

Labor Law: Charge Nurses Did Not Coerce Subordinates, Hospital Must Recognize Union.

Coercion of rank-and-file employees by one side or the other can invalidate the voting on the issue of union representation.

To determine if coercion occurred the question is whether a supervisor's pro-union conduct realistically tended to coerce or interfere with the employees' exercise of free choice in the union voting.

That depends upon the nature and degree of supervisory authority possessed by the supervisors who engaged in pro-union advocacy and the nature and extent of the conduct they are accused of.

It must also be determined if the supervisors' pro-union conduct interfered with freedom of choice by materially affecting the outcome of the election, taking into account:

The margin of victory in the election;

Whether the conduct in question was widespread or isolated;

The timing of the conduct;
The extent to which the conduct became known;
and

The lingering effect of the conduct.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
March 13, 2012

After a majority of the hospital's nurses voted in favor of union representation and the vote was validated by the US National Labor Relations Board (NLRB) the hospital nevertheless refused to recognize the union as its nurses' bargaining representative.

The hospital's argument in support of its stance was that the pro-union vote was tainted by pro-union coercion of subordinate nurses by pro-union charge nurses and was invalid for that reason.

The union responded with unfair labor practice charges against the hospital which the NLRB upheld. The NLRB ordered the hospital to recognize the union as the nurses' bargaining representative.

The hospital appealed. The US Court of Appeals for the District of Columbia Circuit ruled the pro-union charge nurses did not coerce their subordinates.

Thus the pro-union vote was valid, the hospital was required to recognize the union and was guilty of an unfair labor practice for refusing to do so.

No Coercion of Nurses By Charge Nurses' Pro-Union Advocacy

The charge nurses in question actively encouraged the nurses to support the union. They talked about and sent text messages reminding nurses about upcoming union meetings and urged them to encourage other nurses to attend. That is not considered coercive.

Supervisors Improperly Solicited Authorization Cards

The charge nurses also urged nurses to sign and mail in authorization cards and reminded them about the deadlines for the cards to be recognized by the NLRB as a basis for coming in and conducting a union election. A supervisor soliciting authorization cards is considered coercive.

The Court ruled, however, that any coercion was cancelled out by the charge nurses in question having switched to an outspoken anti-union stance after the election was scheduled and they had been promoted from charge nurses to management employees. ***Veritas Health v. NLRB***, ___ F. 3d ___, 2012 WL 811520 (D.C. Cir., March 13, 2012).