

Labor Law: Nursing Home Ordered To Cease And Desist.

During a fight over unionization of the nurses at a nursing home, an outspoken union supporter was disciplined for an alleged lapse in good nursing practice and was reported to the state board of nursing.

The union seeking to be recognized as the nurses' bargaining representative filed a complaint with the National Labor Relations Board which in turn filed a petition with the US District Court for the Northern District of Ohio seeking a court injunction on behalf of the disciplined nurse.

The Court agreed with the union that it is an unfair labor practice for an employer to single out a prominent union supporter for discipline which goes beyond what is normally meted out to other employees for the same offense.

Only with this nurse had the nursing home ever reported a single lapse in nursing practice to the state board. Other nurses had been guilty of several instances of questionable practice before the nursing home took action against them with the board. Calatrello v. Affinity Medical, 2014 WL 296634 (N.D. Ohio, January 24, 2014).

Lab Results: Patients' Right To Access Expanded By CMS.

On February 6, 2014 the US Centers for Medicare and Medicaid Services (CMS) published regulations which now require clinical laboratories to give patients the same right of full access to their lab test results that patients already have for lab test results in hospitals' and other healthcare facilities' records systems.

CMS acknowledged healthcare providers' concerns that some patients may not be able to read and understand lab test results on their own and may take values out of context which appear nominally to be outside of the normal range.

However, CMS has opted instead for an approach that supports wider access by patients to their own healthcare information through direct communication with their providers or through access to healthcare information portals through which information is made available.

CMS's recent Federal Register announcement is available at <http://www.nursinglaw.com/CMS020614.pdf>

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Pages 7290-7316

Nursing Documentation: Nurses Called To Court To Testify On The Issue Of Mental Competency.

The nursing home resident's bank accounts held \$432,968.73 on the date of his death.

Shortly before the resident passed, a friend of the resident had the resident add his name to the resident's accounts.

If the resident had the mental capacity to understand what he was doing, the friend owned the accounts after the resident passed. If not, the deceased's family inherited the money. Not surprisingly, the case ended up in court.

Numerous witnesses were called to testify. They included the friend who stood to take ownership of the accounts, protective services personnel who were investigating the friend's relationship with the resident in response to the family's complaints, family members and the physicians and nurses who cared for the him in the nursing home.

The jury ruled that the deceased lacked the mental capacity to enter into a valid legal contract when he signed over his bank accounts to his friend.

The evidence included nursing documentation of evaluations that involved assessment of mental status as well as day-to-day progress notes as to how he had or had not been alert, oriented and able to participate in his own care.

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The nursing documentation was also entered into evidence.

The nurses were able to testify from their progress notes that he seemed alert but was forgetful and demanding. The elopement risk assessment indicated he was cognitively impaired with poor decision-making skills and his fall risk assessment stated that he suffered from intermittent confusion.

One episode was documented where he insisted he was having a heart attack, which he claimed he would know because he was a heart surgeon.

There were other notes that he was paranoid and sometimes spoke with persons who were not in the room, often demanded food items as he saw them in TV commercials and drank curdled milk past its expiration date. Estate of Minton, 2014 WL 354527 (Tex. App., January 30, 2014).