

## Medication Error: Court Says Nurse's Negligence Does Not Justify Termination For Cause.

The Supreme Court of Pennsylvania had to decide if a new graduate nurse was terminated from the hospital's pediatric intensive care after a medication error for just cause as opposed to excusable inadvertence that did not justify termination.

Just after completing a preceptorship for another unspecified patient-care error the nurse did not properly dilute an antibiotic before administering it to a pediatric patient. The court record did not specify the medication, the route or the dosage.

It was the hospital's express policy for nurses to look up medications in a reference book if they had any questions, but this nurse had given the same medication before and believed she knew the proper dilution factor.

### **Forced Resignation = Termination**

The nurse was offered the option of resigning or being terminated and resigned. That is considered termination.

### **Just Cause / Willful Misconduct**

The question was whether she was terminated for cause. Willful misconduct and just cause for termination are basically the same thing in legal terminology.

### **Medication Errors Not Considered Willful Misconduct**

The court ruled that inadvertent medication errors are not willful misconduct for a nurse. The court essentially shifted the burden to a nurse's employer to supervise and correct a nurse who commits medication errors.

The court applied the same standard to nurses that applies to other employees. Inadvertent mistakes are not willful misconduct justifying termination. Nurses' mistakes can cause substantial harm to patients and can lead to legal liability for their employers, but in the court's mind that did not change the general rule.

If a nurse is accepting supervision and making a best effort to administer medications properly, but commits an error, there is no willful misconduct. Navickas v. Unemployment Comp. Review Bd., 787 A. 2d 284 (Pa., 2001).

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***Nurses are not held to a different standard than employees in other occupations.***

***That is, a nurse cannot be terminated for cause unless there has been willful misconduct or intentional disregard of the employer's interests.***

***Nurses sometimes commit medication errors. Medication errors always have a potential to harm patients and sometimes do harm the patient.***

***When a nurse commits a truly inadvertent mistake in administering medications there are no grounds to find willful misconduct.***

***The archaic terminology of the common law is still relevant today in defining when there is willful misconduct justifying an employee's termination.***

***Inadvertence is willful misconduct only if it is of such a degree as to manifest culpability, wrongful intent, or evil design, or show and intentional and substantial disregard of the employer's interests or of the employee's duties and obligations toward the employer.***

SUPREME COURT OF PENNSYLVANIA,  
2001.

## Wrongful Discharge: Court Says Employee Able To Sue Nursing Home Management Company.

A nursing home administrator was fired for reporting his employer to the US Occupational Safety and Health Administration.

The District Court of Appeal of Florida did not get into the particulars except to report that the jury did find illegal retaliation and did award damages for wrongful discharge based on the state's Whistle Blower Act.

However, before the jury began deliberations the local trial judge dismissed the nursing home management corporation from the case, leaving the nursing home itself as the only defendant that would be responsible to pay the verdict.

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***The management corporation was under contract to establish personnel policies, set wages and salaries, recruit employees, set employee schedules and perform various other management duties.***

***The management corporation can be sued in a wrongful discharge case.***

DISTRICT COURT OF APPEAL  
OF FLORIDA, 2001.

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The Court of Appeal ruled that the management corporation, although technically not the administrator's employer, should be treated as if it were his employer. The management corporation hired him and wrongfully decided to fire him and should have to pay the damages. Martinolich v. Golden Leaf Management, Inc., 786 So. 2d 613 (Fla. App., 2001).