

## 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

#### Are 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).

***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 shows an 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.

## Diversion Of Narcotics: Nurse Guilty Of Voluntary Act, License Suspended.

A nurse stole a fentanyl patch from the trash at work, took it home, extracted the narcotic, mixed it with water and injected himself, he said, in an attempt to commit suicide. He lost his nursing license and his case-manager job which required a nursing license.

He claimed he had a disabling mental illness that forced him to do it and rendered him not responsible for his actions.

***A nurse who diverts narcotics may be suffering from an addiction or mental illness that to some extent diminishes the nurse's power of control over his actions.***

***However, the law looks at whether there was time for the nurse to reflect on his actions and consider the consequences.***

***If there was time to reflect, the law considers the act voluntary and the nurse is guilty of criminal conduct for which he can lose his license and his job.***

SUPERIOR COURT OF NEW JERSEY,  
APPELLATE DIVISION, 2001.

The Superior Court of New Jersey, Appellate Division, disagreed. It was a conscious, deliberate and voluntary criminal act for which he was legally responsible. Even if compelled by mental illness or addiction to divert narcotics, nurses are fully responsible for their actions. Mullarney v. Board of Review, 778 A. 2d 1114 (N.J. App., 2001).