

Misdemeanor Conviction: Nursing License Restricted.

A nurse pled guilty to a misdemeanor charge of obtaining a controlled substance (phentermine) with a forged prescription.

The Court of Appeals of Kentucky, in an unpublished opinion, upheld the State Board of Nursing in restricting her registered nurse's license for two years only to jobs where she would have close supervision with narcotics.

Guilty Plea to Avoid More Serious Charges

The court ruled a conviction on a guilty plea is the same as any other conviction as far as a nurse's license is concerned, even if the nurse claims extenuating circumstances, i.e., an ongoing physician/patient relationship with the doctor whose name she forged who had been writing prescriptions for her migraines and the nurse pled guilty only to avoid more serious felony charges. Slone-Vasquez v. Board of Nursing, 2003 WL 22976179 (Ky. App., December 19, 2003).

Misdemeanor Conviction: Aide's Certificate Revoked.

A certified nurses aide failed to check the box indicating he had been convicted of a misdemeanor on his application to renew his state certificate. He had been caught carrying a concealed pistol and got two years probation.

The California Court of Appeal, in an unpublished opinion, said the Department had two good reasons to deny his application to renew his certificate to work as a home health aide.

Dishonesty

Crime Substantially Related to Qualifications

Patient caregivers get no leeway at all for dishonest answers on their applications for initial licensure, certification or renewal.

The possibility of bringing a firearm into a vulnerable patient's home is grounds to bar an individual from working as a home health aide, the court ruled. Thomas v. Dept. of Health Services, 2004 WL 24066 (Cal. App., January 2, 2004).

Medical Directive Ignored: Court Finds Violation Of Nursing Home Residents' Bill Of Rights.

The Court of Appeal of Louisiana refused to stop the family's lawsuit from going forward pending a hearing by a medical review panel.

A medical review panel was not needed to decide whether the facts fit the legal definition of medical negligence, as medical negligence can only occur while rendering medical care.

That is, the real issue was whether the nursing home staff ignored the resident's medical directives by calling the EMT's who performed CPR, intubation, manual ventilation and chest compressions and put in a nasogastric tube.

Assuming the resident's medical directives were ignored, the only issue is computing damages for pain and suffering before she died and mental and emotional distress to the family.

The Nursing Home Residents' Bill of Rights requires nursing homes to uphold residents' dignity and personal integrity.

Performing CPR and other lifesaving measures against a resident's express wishes is not medical treatment. There is no need to split hairs over the definition of medical negligence to determine whether the resident's wishes were ignored.

COURT OF APPEAL OF LOUISIANA
December 10, 2003

The Nursing Home Residents' Bill of Rights requires long-term care facilities to uphold every resident's dignity and personal integrity.

The resident signed a directive to her physicians not to prolong her life beyond any reasonable chance of recovery from incurable illness.

She signed a second medical directive clarifying she wanted comfort care including pain and fever medications, oral fluids, mouth care, positioning, oxygen and suctioning and clarifying she expressly did not want a respirator, feeding tube, dialysis or CPR.

The family did not need an expert witness on the legal standard of care to prove their case, as negligence was not the issue. Terry v. Red River Center Corp., __ So. 2d __, 2003 WL 22901004 (La. App., December 10, 2003).