

Narcotics Diversion Nurse Addict Disability Discrimination

The United States District Court for the District of Massachusetts dismissed all counts of the nurse's disability discrimination lawsuit against her former employer a hospital.

When the nurse interviewed for her job she revealed she had been fired for diverting narcotics but had enrolled in the state nursing association's five-year rehabilitation program to assist nurses who had diverted narcotics to re-enter the mainstream of nursing practice.

She was hired and everything was fine for three years. Then she injured her back and went on leave. While out on leave she finished and received a certificate of completion for the five-year rehab program.

Then she started taking Percocet for her back pain. She told her supervisor about this when she returned to work. When she declined the offer of a special safety net monitoring program to assist her with administering narcotics to patients, her supervisor told everyone to keep an eye on her.

Offhand comments began to circulate about the nurse's drug-abuse history. Concerns also began to surface over how she was administering narcotics. She asked another nurse to inject a narcotic she had drawn, in violation of hospital rules. On another occasion she failed to get a second nurse to co-sign for narcotics she charted she had wasted.

Because of her history, narcotics diversion was suspected so strongly that her supervisor considered terminating her without an investigation. But only considering something is not disability discrimination, the court pointed out.

The direct risk to patients from these infractions was not serious enough to terminate a nurse, the court felt. A nurse addicted to narcotics is a general safety threat, and these infractions strongly suggested the nurse was diverting narcotics, but without solid proof of diversion these infractions alone were not enough.

A successfully rehabilitated drug abuser is person with a disability.

This nurse was open about her past. She was in a five-year program for recovering nurse/addicts who had been in trouble for diverting narcotics.

Her job went fine until she started taking Percocet for a back injury from lifting a patient. Suspicions arose she had started diverting narcotics again, but no one saw her do it and it could not be proven conclusively.

However, failure to assess and to document an assessment of the patient's need for prn narcotics and failure to document administration of medications are legitimate patient-safety issues for any nurse.

A person with a disability must be a qualified individual with a disability to sue for disability discrimination in employment.

Being qualified, among other things, means the person does not pose a threat to the health or safety of other persons encountered in the workplace.

That includes a disabled nurse's patients.

UNITED STATES DISTRICT COURT,
MASSACHUSETTS, 1999.

The court said things did become truly alarming when she started a pattern of overuse of prn IM Demerol, giving it without assessing or charting her assessments of the patients' needs for narcotics. Other shifts had managed three selected patients of hers well with only po Tylenol.

The court agreed it was the last straw when on one occasion she apparently gave an IM narcotic to a patient without charting it in the MAR. Because she supposedly was too busy, instead of charting it in the MAR she just passed the information along verbally to the nurse reporting for duty on the next shift.

One deliberate infraction of hospital nursing protocols for administration of medications to patients that jeopardizes any patient's wellbeing, the court said, is grounds to terminate a nurse, whether or not the nurse is by a law a disabled person.

There was evidence that all of the other nurses this hospital had terminated in the preceding five-year period were guilty of equally serious patient-safety violations. The court believed another nurse who was not a former substance abuser who created a similar pattern of safety risks to patients would likewise have been terminated at this hospital.

The court conceded this nurse was by law disabled. A successfully rehabilitated substance abuser is defined by law as a person with a disability, unless proven to have relapsed into active addiction.

In the final analysis, however, this nurse's substandard practices with narcotics posed unacceptable problems with patient safety which the court could accept as a legitimate non-discriminatory explanation for her termination.

The court's logic was that a disabled nurse who is a hazard to patients is not a qualified individual with a disability. A disabled person who is not a qualified individual cannot sue for disability discrimination. ***Griel v. Franklin Medical Center, 71 F. Supp. 2d 1 (D. Mass., 1999).***