

## Nurse Impairment Impaired Drug Abuse Addict Addiction

A nurse with six years at the hospital usually took her break outside, weather permitting, sitting at a picnic table with the other cigarette smokers.

One day her usual companion on breaks was not on duty, so she took a walk by herself around the outside perimeter of the hospital. When she returned two other smokers observed a white powdery substance under her nostrils and reported her to their supervisors after their breaks.

The nurse returned to her unit. Two individuals on the unit also observed the same white powdery substance under her nostrils. They claimed she seemed “hyper” or had an elevated mood while she worked the balance of her shift.

Nine days later she was phoned at home, told to report to a meeting with the assistant director of nursing and told to bring her union rep along if she wanted. She was confronted by the four witnesses and fired on the spot. She demanded a drug test, which was refused. She went to her own physician that day and produced a urine sample that tested negative.

The U.S. District Court for the Northern District of Iowa said when a nurse’s employer becomes aware of facts pointing to illicit drug use, a drug screen should be offered if it will show whether the nurse was on drugs at the time of the behavior in question. A drug test after the fact may not prove anything about drug use during a particular time frame, the court pointed out, which could help or hurt the nurse’s or the employer’s legal position, depending on the circumstances.

The court upheld in general terms a nurse’s right to sue for disability discrimination over adverse personnel action taken under an erroneous perception the nurse is abusing or addicted to drugs. In such a suit the employee has the burden of proof and the jury has to decide whom to believe. **Hill v. Hamilton County Public Hospital**, 71 F. Supp. 936 (N.D. Iowa, 1999).

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***The analysis starts with the definition of a disability:***

***A disability is having a physical or mental impairment that substantially limits one or more major life activities, or***

***Having a record of such an impairment, or***

***Being perceived by the employer as having such an impairment.***

***A successfully rehabilitated drug abuser is by law disabled, but not a person who is currently addicted to or abusing illegal drugs.***

***Regardless of past history, an employee fits the legal definition of disabled if the employer erroneously perceives the employee is currently using or impaired by illicit drug use.***

***A current or discharged employee can sue for disability discrimination if the employer took adverse personnel action against the employee under an erroneous perception of the employee as a current addict or substance abuser.***

***If the employee sues, the employee must prove he or she was not using or addicted at the time.***

UNITED STATES DISTRICT COURT,  
IOWA, 1999.