

Narcotics Diversion And Abuse: Nurse Can Be Fired For Current Use Of Drugs, Even If In Rehab.

The U.S. Fourth Circuit Court of Appeals (West Virginia) ruled recently that a nurse anesthetist was still a “current” drug abuser under the law. She was caught diverting narcotics by filling the syringes with saline, sending them to the pharmacy to be wasted, and taking the drug itself home to use. She was notified of her termination a month later, while off drugs in a program she had entered at her employer’s urging.

Her employer did not violate the Americans With Disabilities Act. The Act says an employer cannot discriminate against an employee who has successfully completed a supervised drug rehabilitation program and is not currently using drugs illegally. On the other hand, an employer can take action against a current drug abuser.

Anti-discrimination laws protect rehabilitated addicts, not current users.

Current drug use is drug use which has occurred recently enough to justify the employer’s belief that drug use is still a problem.

The laws do not protect an employee who has just entered drug rehab at the employer’s insistence from being fired for the conduct which landed the employee in rehab.

UNITED STATES COURT OF APPEALS,
FOURTH CIRCUIT (WEST VIRGINIA), 1997.

According to the court, the Equal Employment Opportunity Commission’s guidelines state that an employee who illegally used drugs during the weeks and months prior to being fired can still be considered a “current” drug abuser, even if the employee at the time of discharge is not on drugs because he or she is a patient in a detox or rehabilitation program.

The court ruled this employer was justified in believing that drug abuse was still an ongoing problem on the date of this employee’s termination. She had diverted and used narcotics close enough in time before that date to satisfy the court. According to the court, an employee who is in drug rehab only because of being caught is still considered a “current” drug abuser by law and can be treated accordingly. **Shafer vs. Preston Memorial Hospital**, 107 F. 3d 274 (4th Cir., 1997).