Narcotics Diversion: Rehabilitated Nurse Regarded As Active Drug Addict, Disability Discrimination Lawsuit Upheld By Court.

During the mid-1990's a nurse who had become addicted to morphine was caught diverting narcotics and was fired.

She entered a program run by the state board of nursing. After several months of drug treatment she obtained nursing employment that was compatible with her restricted license which did not allow access to narcotics. While she worked she remained under board of nursing supervision for three years. She also completed a deferred prosecution with the local criminal court. Criminal charges for stealing narcotics from her former employer were dropped.

Several years later while working on an inpatient psychiatric unit she began to have medical issues with lupus, spinal stenosis and depression.

Her supervisors knew that she had a history of addiction and diversion and also knew that she had successfully completed a supervised program with the board of nursing years earlier.

Gossip began to circulate that she was once again diverting and abusing narcotics.

A number of charting errors fueled her supervisors' suspicions that the rumors were true that she was again in trouble with addiction. She blamed the charting errors on her medical issues which were making it harder for her to focus and concentrate. She expressly denied drug use.

Testing for Narcotics Was Negative

She was told to report for a drug test. The drug test was negative. She was terminated five days later nevertheless.

The US District Court for the Western District of North Carolina ruled the nurse had grounds for a disability discrimination lawsuit.

Successfully rehabilitated drug addicts and recovered alcoholics are considered to have a disability that is protected by the Americans With Disabilities Act.

Adverse employment action taken against an individual with a disability who is regarded as having an impairment like active drug addiction is considered discriminatory if the impairment does not in fact exist. **Scott v. Presbyterian Hosp., 2012 WL 4846753 (W.D.N.C., October 11, 2012).**

Forged Medication Order: Nurse's Age, Disability Discrimination Lawsuit Dismissed By Court.

An RN was terminated after she gave IV 50% dextrose solution to a patient without a physician's order and forged a physician's signature to an order to obtain it from the pharmacy.

The nurse sued her former employer for alleged age and disability discrimination and alleged retaliation because she requested Family and Medical Leave Act leave from her job to have surgery.

The US District Court for the Southern District of Ohio dismissed her case.

The nurse had no direct evidence that discrimination played any part in the motivation behind her termination.

The hospital had legitimate, non-discriminatory grounds to terminate the nurse for conduct that was clearly illegal under state law.

> *The law prohibits nurses from making medical diagnoses and from prescribing medications.*
>
> *The nurse not only administered IV 50% dextrose solution without a physician's order, she signed a physician's name to a bogus order to obtain it from the pharmacy.*
>
> *There were legitimate, non-discriminatory reasons for firing the nurse.*
>
> UNITED STATES DISTRICT COURT
> OHIO
> September 27, 2012

The Court pointed out that after the episode occurred it was fully investigated by her nurse manager who conferred with human resources and senior nursing management before they collectively decided to terminate the nurse for misconduct.

The Court refused to look into the nurse's argument that she was only following the hospital's own protocols. The hospital could not possibly have a protocol on its books for nurses that went contrary to state law.

There was no similar situation available for comparison involving a younger nurse at the hospital who was not fired for a medication error, that is, one who had gone so far as to forge a physician's signature on falsified documentation. **Kapp v. Jewish Hosp., 2012 WL 4483368 (S.D. Ohio, September 27, 2012).**