

Treatment Plans: Failure To Follow Is Grounds For Termination.

The nursing assistant was told at the time of hiring that she would be required to follow the residents' care plans which ensure resident safety and direct the performance of individualized services.

Nevertheless, there were several incidents which resulted in her termination where she did not follow the care plans.

The aide transferred a resident by herself whose care plan required two staff members for transfers. This resulted in a written reprimand which warned her that termination could follow if she did not start following the care plans precisely.

She was suspended three days without pay two months later for a faulty sling transfer to the toilet in which the resident ended up having to be lowered to the floor.

She was finally terminated after she raised a high-fall-risk patient's bed above the maximum allowed by the care plan of eight inches off the floor to change the linens, then left it at the incorrect height.

Continual failure to follow the residents' care plans reflected a negligent or in-different approach to her job which went against her employer's reasonable expectations.

COURT OF APPEALS OF MINNESOTA
July 2, 2012

The Court of Appeals of Minnesota upheld the facility's right to terminate her for employment misconduct.

The Court ruled the facility had the right to expect strict compliance with the residents' care plans that directly related to resident health and safety. That legitimate expectation left no room for exercise of judgment by the nursing assistant.

Her argument about good-faith errors in judgment was irrelevant because the patient safety standards set up in the care plans left no room for her to exercise her own judgment, the Court said. **Roloff v. Arrowhead Senior Living**, 2012 WL 2505750 (Minn. App., July 2, 2012).

Narcotics Diversion: Nurse's Discrimination Suit Dismissed.

When confronted about her possible drug abuse the nurse denied she had a drug problem and stated that she had a valid current prescription from her physician for Darvocet.

She was informed she had to undergo a drug screening at an outside lab, but at the same time was told that corroborating the existence of her Darvocet prescription would shield her from consequences for a positive test result.

The drug screen came up positive for propoxyphene, the narcotic component of Darvocet, one of the same drugs for which the nurse had a number of documentation discrepancies.

The nurse never provided a physician's prescription for Darvocet. She was fired.

The nurse hired in her place was also African-American and was sixty-years old, three years her senior.

Two younger Caucasian nurses were not fired over their drug diversion and abuse. However, they each admitted they had a problem with addiction and successfully completed the State Board's treatment and monitored probation program for impaired nurses.

UNITED STATES DISTRICT COURT
ALABAMA
June 27, 2012

The hospital's dispensing system showed an unusually large number of medications going out under one particular nurse's identification code.

A print-out specifically listing the nurse's narcotics for the month was compared to the patients' medical charts.

The cross-comparison revealed discrepancies where propoxyphene compounds (Darvon and Darvocet) were obtained from the system by this particular nurse but were not administered to any patient or the amount actually given to the patient was not recorded in the chart.

When confronted, the nurse had nothing to say to dispute the accuracy of system's print-out of the narcotics she had obtained, nor could she explain the discrepancies in her documentation.

When accused, the nurse denied having a drug problem. She was told she had to take a drug test. When it came back positive for propoxyphene she said she had a physician's prescription but she never handed over a copy to corroborate it.

Nurse's Discrimination Suit Dismissed

The nurse, fifty-seven years old and a minority at the time of her termination, sued her former employer for age and race discrimination. The US District Court for the Middle District of Alabama dismissed the case.

Solid proof of medication errors with narcotics along with laboratory evidence to support accusations of diversion are legitimate, non-discriminatory reasons to terminate a nurse's employment, the Court said.

The nurse who was hired to replace her was also a minority and was three years older. That also tended to negate any discriminatory intent by the hospital.

Two other nurses, both non-minorities and much younger, were not fired for their drug problems.

However, according to the Court, they were not valid bases for comparison in making out a discrimination lawsuit because they both admitted their problems with addiction and successfully completed an approved rehabilitation program, unlike the nurse in question who continued to deny her problem even in the face of substantial evidence. **Banks v. Jackson Hosp.**, 2012 WL 2462311 (M.D. Ala., June 27, 2012).