

Narcotics Diversion: Nurse Claimed Legal Protection As Disabled Individual.

The nurse in question had a long history of job-related problems with addiction.

She lost her job in an oncology unit for diverting IV Benadryl, but then reported herself to the state board, entered intensive outpatient treatment and was allowed to keep her license with a restriction prohibiting employment which involved access to narcotics.

She went to work in another hospital's admissions unit. It was a low-acuity job where narcotics were dispensed only rarely. After a year she moved into a med/surg position. Even though the state board declined to lift her license restriction she continued to work in med/surg and eventually figured out how to divert and self-administer Dilaudid on the job.

She was caught, was reported to the board and entered intensive treatment. She was terminated when she did not return to work when her eligibility for medical leave was exhausted.

Was the Nurse a Qualified Individual With A Disability?

Under the Americans With Disabilities Act, a successfully rehabilitated substance abuser is considered a qualified individual with a disability who has legal rights, while a substance abuser currently engaged in substance abuse has no right to sue for discrimination based on substance abuse, the US District Court for the Middle District of Alabama noted for the record.

However, according to the Court, the US courts are all over the map on the timing of when a person with a history of substance abuse has abstained long enough no longer to be considered a current abuser. The Court faulted the hospital for going off into hair-splitting analysis of this enigmatic question in the hospital's court papers.

The better approach, according to the Court, is for the employer to have a policy that is neutral as written and enforced the same way with disabled and non-disabled employees alike that diversion, failure to administer, failure to document wastage, etc., of narcotics is grounds for termination. **Clark v. Jackson Hosp.**, 2013 WL 5347450 (M.D. Ala., September 23, 2013).

The hospital's prohibition on diversion is a neutral rule of general applicability.

Hospital policy prohibits unauthorized possession, usage or disposal of drugs as well as using drugs inappropriately while working.

Hospital policy, on its face, makes no distinction between disabled persons who are addicted or who have a history of addiction, and those who are not or never have been disabled by substance abuse.

The hospital could have prevented this litigation altogether simply by terminating the nurse in question for violating hospital policy, without getting into the question whether she was still addicted based on when she last used drugs.

The Americans With Disabilities Act includes successfully rehabilitated drug addicts and alcoholics within the definition of disabled persons who have legal rights.

However, a person with a substance abuse history currently drinking or using drugs is not a qualified individual with a disability and has no rights under the disability discrimination laws.

UNITED STATES DISTRICT COURT
ALABAMA
September 23, 2013

Psych Emergency: Court Questions Whether Drugs Were Necessary.

A young man was brought to the E.R. by his parents after he returned from a trip to Mexico during which he became highly intoxicated on drugs and alcohol and tried to kill himself.

He voluntarily agreed to take a dose of a medication used to treat manic episodes associated with bipolar disorder.

When he awoke in the E.R. the next morning he was highly agitated. He began screaming threats, threatened to kill himself and armed himself with an O₂ tank he could swing or throw as a weapon.

The police were called and assisted hospital staff in putting the man in four-point restraints where he was given another dose of medication over his verbal protests.

A person may refuse psychotropic meds unless a court order has been obtained authorizing their use or it is an emergency where a physician is able to say the individual poses an immediate threat of physical harm to himself or others.

In an emergency, psychotropic medications may be forcibly given only as a last resort after other alternatives have been considered and ruled out.

UNITED STATES DISTRICT COURT
ILLINOIS
September 20, 2013

The US District Court for the Northern District of Illinois agreed with the hospital that a psychiatric emergency existed.

The Court dismissed the patient's lawsuit as it pertained to restraining him.

However, the Court was not satisfied that hospital staff fully evaluated whether the lesser alternative of restraints was sufficient before going ahead with forcibly medicating him. **Pantaleo v. Hayes**, 2013 WL 5311450 (N.D. Ill., September 20, 2013).