

Narcotics Diversion: Nurse Sues Employer Over Confrontation, Court Dismisses The Lawsuit.

The prelude to the incident in question was a counseling session between the registered nurse and her supervisor over documentation errors with her narcotics.

The counseling session came after she checked out three 100 mg doses of fentanyl on one shift but documented only three 25 mg doses going to each of three patients and did not document proper wastage of the 3 x 75 mg total excess.

Soon afterward the nurse was called into a meeting with two nurse managers and someone from the hospital's employee assistance program. The nurse was told bluntly that she was suspected of narcotics diversion and on-the-job drug abuse. She was asked and agreed to give blood and urine samples. The three hospital representatives walked her down to the E.R.

The nurse was assured she was free to leave but was not allowed to drive her car parked on the street blocks away, based on suspicion she was presently under the influence. A female hospital police officer drove the nurse and her supervisor to the nurse's car to get some personal items, then back to the hospital. The nurse's boyfriend came and took her out to dinner. Then they went and got her car.

The drug tests came back negative. The nurse was fired anyway for substandard performance, that is, for medication documentation errors.

She sued the hospital for false imprisonment over the way she was confronted. The Court of Appeals of Ohio threw out her lawsuit.

No False Imprisonment Occurred

The nurse voluntarily consented to be tested for drugs, albeit in the face of disciplinary action extremely prejudicial to her continued employment if she refused.

She was watched one-on-one but was never restrained from leaving the premises.

A private party can refuse to allow an apparently impaired individual access to a motor vehicle, that is, by threatening to notify law enforcement if the party tries to drive. **Sharp v. Cleveland Clinic, 2008 WL 1700527 (Ohio App., April 11, 2008).**

False imprisonment occurs when a private citizen intentionally confines another against his or her will.

A private citizen or corporate employer cannot detain another for drug testing, whether or not the private citizen or corporate employer has reasonable suspicion or probable cause.

A private citizen can threaten another with lawful consequences like disciplinary action but cannot bodily restrain another person against his or her will.

A private citizen can threaten to call the police if another person, believed to be impaired, tries to operate a motor vehicle, but, again, cannot physically prevent the person from accessing the vehicle.

Although the nurse in question was confronted by three persons and walked down to the emergency room for drug testing by three persons, they at no time ever restrained or threatened to restrain her physically.

She was at all times free to leave the hospital grounds and face the consequences of refusing to be tested for illicit drug use.

COURT OF APPEALS OF OHIO
April 11, 2008