

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Narcotics Diversion: Other Nurses Were Not Following Procedures, Case Not Proven.

A nurse had been working in critical care for more than twenty-five years and had gained respect for her competence and dedication before suspicions began to gather that she was diverting narcotics.

The hospital had installed equipment in the ICU, described by the US Circuit Court of Appeals for the First Circuit as a “computerized medicine cabinet,” to monitor nurses’ narcotics. It recorded the nurse’s personal keypad code and the patient’s data before unlocking to dispense the medication.

Nurses were also required to document their narcotics by jotting down by hand the patient, medication, time, route and dosage on a traditional paper medication administration record.

Discrepancies came to light between the two records for this nurse’s patients’ narcotics, that is, the electronic data did not always match her handwritten notations on the MAR’s.

She was questioned by her superiors. Finding her explanations not credible, they suspended her. She filed a grievance. The arbitrator upheld her grievance and ordered her reinstated. The hospital appealed the arbitrator’s ruling but the Federal District Court and the Circuit Court of Appeals both agreed with the arbitrator.



***This nurse’s termination was without cause. She must be reinstated.***

***In light of the actual practices going on at the hospital with administration and documentation of narcotics, the discrepancies in this nurse’s handling of her narcotics cannot support the conclusion she was guilty of diversion.***

UNITED STATES COURT OF APPEALS  
FIRST CIRCUIT  
November 21, 2005

### Discrepancies Existed

#### In Other Nurses’ Charting

The court pointed to testimony to the effect that other nurses in the same ICU routinely caught up on their handwritten MAR entries during breaks or at the end of their shifts when they could not always remember the exact medications and dosages given.

There was testimony that nurses would check out narcotics to prepare IV drip bags well in advance of knowing whether or not they would actually need to hang them. Although not a commendable practice, nurses sometimes deviated from physicians’ orders and administered narcotic meds through IV lines rather than IM.

There was testimony that the hospital had no established policy for which nurse was to document narcotics in the MAR when two nurses, that is, a trainee and a preceptor, both had responsibility for a patient.

Given the laxity the hospital tolerated in the way other nurses documented their narcotics, the court ruled that discrepancies in the way this particular nurse charted her narcotics were not legally sufficient proof that she was diverting narcotics to her own use. **The Mercy Hosp., Inc. v. Mass. Nurses Assn., 429 F. 3d 338 (1st Cir., November 21, 2005).**

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