

## Meal Served To NPO Pre-Op Patient: Firing Of Aide For Misconduct Upheld By Court.

**A** nurse's aide had worked for the hospital for more than two years. His duties included serving meals to patients. On the day in question, he brought food to a patient after he had been instructed by a nurse, based on the physician's verbal order, that the patient was not to be fed.

This employee as well as all new non-professional employees were oriented to the importance of not serving or allowing food to patients scheduled for procedures involving general anesthesia, i.e. the risk of regurgitating and choking on food while unconscious. There were procedures in place for signs to be placed outside the room and above the bed of any NPO patient, although in this case the patient was recently admitted and no such signs had yet been posted. However, it was not disputed that the nurse had explicitly given verbal orders to the aide not to feed this patient, and that he left a dinner tray in the room anyway.

"There is one unique area of employment law where strict compliance with protocol and militarylike discipline is required. It is the medical field. Human lives depend on it, and those not trained as physicians cannot be given the encouragement to act as if they are so trained," according to the court. **Smith vs. Board of Review, Department of Labor, State of New Jersey, 658 A. 2d 310 (N.J. Super., A.D., 1995).**

***Giving a tray of food to a patient who is scheduled for surgery, which was the cause of a nurse's aide's discharge, is a willful disregard of the employer's best interests and amounts to misconduct justifying discharge.***

***Misconduct is (1) An act of wanton or willful disregard of the employer's interests, (2) A deliberate violation of the employer's rules, (3) A disregard of standards of behavior which the employer has the right to expect of employees, or (4) Negligence in such degree as to manifest "culpability, wrongful intent or evil design."***

***Misconduct justifying termination includes a deliberate refusal to comply with an employer's reasonable work rules. Criminal intent is not necessary.***

SUPERIOR COURT OF NEW JERSEY,  
APPELLATE DIVISION, 1995.

## Nurse's Job Eliminated While Out On Leave: Family Leave Law Not Violated.

**W**hen she was ready to return to work from an approved medical leave of absence, a licensed practical nurse was informed by the head of human resources that her old position had been upgraded and now had to be filled by a full-time RN. This change was part of the hospital's efforts to work out compliance with Joint Commission standards, by increasing the overall percentage of nursing work done in the institution by RN's as opposed to LPN's.

The LPN was nevertheless offered other on-call LPN work at the hospital and a full time LPN position at an affiliated nursing home across the street. She refused the full time nursing home position, provisionally accepted on-call LPN work at the hospital, then quit and filed suit. Her suit alleged the hospital had violated the state's Family Medical Leave Act.

The Supreme Court of Maine ruled that the hospital had not violated the state's Family Medical Leave Act. The law requires that any employee who uses family medical leave be entitled to be restored to the employee's old position upon return, unless the employer is unable to restore the employee to the old position due to non-discriminatory factors unrelated to the employee's choice to exercise the legal rights afforded by the Family Leave Act. **Barker vs. St. Mary's Regional Medical Center, 663 A. 2d 44 (Maine, 1995).**