

Scope Of Nursing Practice: Court Accepts Retaliation Suit.

Two registered nurses working in a public health clinic which treated persons with sexually-transmitted diseases became concerned they were being asked to practice beyond the scope of their nursing licenses.

Their concerns centered on two specific cases.

One involved a patient who said his partner had tested positive for gonorrhea and Chlamydia but was not able to corroborate that with a copy of the partner's laboratory results.

Clinic policy and the clinic's part-time physician's standing orders, in line with then-current CDC guidelines, allowed a nurse to treat a patient for an STD in this situation only with a documented positive laboratory result for the partner.

The other was a patient who had been diagnosed with syphilis but whose disease had not yet been staged as primary or latent. The nurse was told to treat the patient presumptively for primary staging, with only one as opposed to three sequential doses of penicillin, without the disease having been staged by a physician.

The nurses believed they were basically being asked to practice medicine without a medical license. Practicing beyond the scope of a nurse's nursing license is a felony in Indiana.

They continued to voice their concerns to their supervisors even after the clinic's attorney supplied an opinion letter that doing as they were told was not beyond the scope of their licenses.

Nurses Fired for Alleged Unprofessional Conduct

Both nurses were fired over vague allegations that their communication skills, professional attitudes and abilities to function as team members were inadequate.

They filed a lawsuit alleging retaliation for refusing to commit what they believed were illegal acts, practicing beyond the scope of nursing practice.

The Court of Appeals of Indiana ruled the nurses will get their day in court. A jury will decide if employer retaliation was the real reason they were fired and, if so, the damages to which they are entitled. **Stillson v. St. Joseph Co. Health**, __ N.E. 3d __, 2014 WL 6772615 (Ind. App., December 2, 2014).

A nurse cannot be made a victim of employer retaliation for refusing to perform what the nurse believes to be an illegal or criminal act or for complaining to a government agency about employer action the nurse believes violates the law.

The nurses believed it would be wrong for them to exceed the physician's standing orders and the clinic's policies by treating an STD patient without laboratory confirmation of a sexual partner's diagnosis.

They also believed it would be wrong for a nurse to treat a syphilis patient without a physician staging the patient's disease.

The nurses complained to the State Board of Nursing that they were being asked to practice beyond the scope of their licenses as registered nurses.

The State Board was not able to give the nurses any concrete guidance. The Board replied only with generalities to the effect it is a criminal offense for a nurse to fail to function within the legal boundaries of nursing practice, to use unsafe judgment or technical skills or to perform any procedure for which the nurse is not prepared by education or experience.

COURT OF APPEALS OF INDIANA
December 2, 2014

Discrimination: Aide Claimed A Pattern Of Bias Existed.

An African-American hospital nurse technician became pregnant during her one-year probationary period.

Problems arose when she complained to her supervisor that other techs on two occasions refused to help her with her patients. One episode resulted in her having to go to the E.R. for what she felt was pre-term labor induced by the strain of moving the patient by herself.

She also complained that a day shift she requested was given to a non-minority co-worker who was not pregnant.

The nursing technician was let go at the conclusion of her probationary period.

She sued for pregnancy, disability and racial discrimination.

At least four other African-American nursing technicians were not offered continued employment at the conclusion of their probationary periods.

UNITED STATES DISTRICT COURT
NEW YORK
December 3, 2014

The US District Court for the Northern District of New York explained that pregnancy, while not a disability under Federal law, is a disability under state law in New York which requires reasonable accommodation from the employer.

As to the claim of racial discrimination, the telling piece of evidence for the Court was that at least four other African-American nursing technicians were not offered continued employment when their one-year probationary periods ended.

When a court must delve into the minds of an employee's supervisors to find their true motives, a pattern of racially differential treatment of other employees tends to point toward bias rather than legitimate factors behind supervisors' decisions. **Jackson v. Battaglia** __ F. Supp. 3d __, 2014 WL 6804352 (N.D.N.Y., December 3, 2014).