

Medical Confidentiality: Court Says Photocopying Of Charts For Legal Purposes Justifies Termination For Misconduct.

The Court of Appeals of Minnesota, in an unpublished opinion, ruled that an LPN was terminated from her position as health unit coordinator at a nursing home for misconduct and was not entitled to collect unemployment benefits.

The court acknowledged it was a complex case, but on balance the facts supported the employer's decision to terminate the nurse.

Sexual Harassment Claim

The LPN was harassed by a male co-worker. She complained. Corrective counseling by management improved his behavior for a time, then the harassment resumed. She sued for sexual harassment.

As a general rule an employer cannot retaliate against an employee for complaining or suing for sexual harassment, whether or not the complaint or the lawsuit is valid, the court pointed out.

Concerns Over Patient Charting

The nurse herself was receiving corrective counseling for her substandard charting. She was warned it was felt she was not responding to corrective counseling and would soon be fired for her charting if things did not improve.

Patients' Charts Copied, Faxed To Lawyer

The LPN began photocopying examples of her charting from patients' charts and faxing them to her lawyer. Two other nurses saw her do it, questioned her and heard her admit what she was doing.

She was terminated on the grounds that she had violated patient confidentiality by copying and faxing off materials from patients' charts. The court agreed with the employer that even with the motive of protecting herself in a pending legal dispute over her charting the nurse had no business divulging the contents of patients' charts and could be fired. **Pribble v. Edina Care Center**, 2003 WL 945792 (Minn. App., March 11, 2003).

Confidentiality of patient records is a very important matter in a hospital or medical institution.

Records privacy is a patient's right. A violation of confidentiality could subject a health care institution to a malpractice claim. An institution can expect employees to keep patient records confidential.

Misconduct is defined for purposes of employment law as any intentional conduct, on the job or off the job, that disregards the standards of behavior that an employer has the right to expect of the employee or that disregards the employee's duties and obligations to the employer.

A single deliberate act adverse to the employer may constitute misconduct.

An employee may commit misconduct by refusing to comply with the employer's reasonable requests and/or policies.

The courts have already ruled explicitly that violation of patient records confidentiality constitutes employee misconduct.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
March 11, 2003

Defamation: Court Throws Out Nurse's Slander Suit.

The pharmacist phoned the physician who had been the office partner of a retired physician when a nurse tried to fill a prescription ostensibly written by the retired physician.

The physician in turn phoned the local police and the personnel department at the hospital. The police reported it to the US Drug Enforcement Administration, which declined to prosecute because the retired physician had dementia and would be unable to testify. The hospital required the nurse to test for drugs, which turned up positive and led to her suspension.

Truth is a perfect defense to a civil lawsuit for slander.

The court looks literally at what the defendant said. Nuances and implications drawn by others are not important.

If what was said was literally true, the lawsuit must be dismissed.

COURT OF APPEALS OF GEORGIA
February 13, 2003

The Court of Appeals of Georgia threw out the nurse's slander lawsuit against the physician.

What he said was completely true, that she tried to fill a prescription written by a physician who had surrendered his medical license, and that was all.

The physician was not responsible for any implications drawn by the legal authorities or by the nurse's employer, that the nurse was a criminal and/or chemically impaired. It was not relevant whether those things were true. **Gunnells v. Marshburn**, __ S.E. 2d __, 2003 WL 297909 (Ga. App., February 13, 2003).