

Disability Discrimination: Nurse Not Able To Prove Firing Was Retaliation For Complaints About Treatment Of HIV-Positive Patient.

A nurse in the hospital's adult acute psychiatric department was called for assistance by another nurse who found a patient lying non-responsive on the floor. They attempted unsuccessfully to resuscitate the patient and the patient died. The patient was HIV-positive.

Understandably upset, the nurse wrote a letter to the unit nursing supervisor complaining about how the patient died. The nurse criticized the first nurse's performance. He also faulted the hospital pharmacist for failing to respond and come to the room as an ostensible member of the code team. He also complained that the crash cart had not been properly stocked, that is, there was no ambu bag and some of the other equipment on the crash cart was faulty or broken.

The nurse concluded that problems with the equipment on the crash cart contributed to the patient's death.

Six days later the nurse was terminated. He filed charges with the Federal Equal Employment Opportunity Commission (EEOC), which issued a "right to sue" letter, meaning the agency would not be pursuing the matter itself but believed the nurse had probable grounds to go ahead with his own private civil lawsuit.

The nurse filed suit against the hospital alleging retaliation for complaining about discriminatory treatment of an HIV-positive patient. The U.S. District Court for the Southern District of Indiana agreed with the hospital's pre-trial motion for dismissal and threw out the lawsuit.

The court acknowledged that HIV is a recognized legal disability. A hospital or other healthcare facility cannot discriminate against an HIV-positive patient or any other disabled patient on the basis of the patient's disability. A nurse or other hospital employee has the right to complain about discriminatory treatment of a disabled patient. No employer may retaliate against an employee for complaining about disability discrimination.

The nurse never showed how others responded when he coded or how the crash cart was stocked had anything to do with the patient being HIV-positive.

True, HIV legally is a disability. A healthcare facility cannot discriminate against a patient with a disability.

Healthcare workers are entitled to complain when they have evidence a patient has been treated in a discriminatory manner.

The Americans With Disabilities Act (ADA) prohibits retaliation by employers against employees who oppose their employers' discriminatory practices.

However, if a nurse believes a patient was discriminated against because of a disability, the nurse has to make that perfectly clear when lodging a complaint or the nurse is not protected from retaliation.

Even when a nurse makes it clear the nurse believes a patient has been discriminated against, the court has to be able to find a reasonable objective basis for the nurse's belief or the court will not accept the nurse's accusations of retaliation.

UNITED STATES DISTRICT COURT,
INDIANA, 2000.

That having been said, the court pointed out that there was no way the hospital could have known the nurse was complaining about disability discrimination toward a patient before the hospital fired him. The hospital got no notification the nurse believed there was HIV discrimination until the hospital was served with the charges the nurse filed with the EEOC more than a year after the fact.

Since the law will heavily penalize an employer for retaliation against an employee who complains about discrimination, it is not enough that the patient had a disability and the patient's care was suspect in an employee's judgment. The law requires the employee to make it very clear if the employee is complaining about discrimination.

And even if an employee clearly says he or she believes there was discrimination against a patient, the court has to be able to find a reasonable objective basis for the employee's belief or the court will not penalize the employer for retaliation.

Albeit long after being terminated, the nurse said he believed the hospital placed this patient on the psychiatric unit rather than in medical intensive care because of the patient's HIV status.

Even if that really was the nurse's subjective belief when he complained about the code response and the crash cart, the court saw no reasonable objective basis for accepting the nurse's opinion as a medical expert that intensive care was a more appropriate placement than the psychiatric unit for this patient.

On a related subject the court also indicated an employer has wide latitude in discussing an employee's performance within administrative channels in the hospital so that appropriate personnel decisions can be made. Without evidence of malice an employee cannot sue the institution or supervisory employees for defamation of character, the court ruled. Hamner v. Community Hospitals of Indiana, Inc., 92 F. Supp. 2d 803 (S.D. Ind., 2000).