

Misappropriation Of Funds: Aide's Termination Upheld By Court.

An aide working in a nursing home obtained written permission from one of the residents to handle her personal checkbook. The aide gave two notes signed by the patient to the charge nurse who placed them in the resident's chart.

The aide was fired and reported to the local police when the administrator learned she was handling the resident's affairs and confronted her and she was unable to account for the funds which were absent from the resident's checking account.

The aide sued for wrongful termination and malicious prosecution, claiming she was actually fired in retaliation for filing a worker's compensation case and for threatening to expose alleged violations of patient-care regulations. The Court of Appeals of Ohio upheld her termination.

Federal and state laws require nursing facilities to set up and enforce policies against abuse of residents and misappropriation of their funds, including a mandatory duty to report misappropriation to local law enforcement.

COURT OF APPEALS OF OHIO
June 24, 2011

Federal nursing home regulations require facilities to develop and implement policies to prevent mistreatment of residents and misappropriation of their property.

The nursing home's policy, which complied with Federal and state law, was that all resident funds were to be deposited with the nursing home administrator's office and employees were to refrain from handling resident's funds, even to the extent of not accepting funds even temporarily for immediate deposit with the front office. Morris v. Dobbins Nursing Home, 2011 WL 2449008 (Ohio App., June 24, 2011).

Self-Medication: Nurse's Firing Upheld By Court.

A nurse had a migraine headache when she arrived for work at the hospital shortly before her scheduled 3:00 p.m. start time.

She was told to rest. About an hour later her co-workers advised her to go home, but she stayed at the hospital and told her co-workers she believed she would be able to start working around 7:00 p.m.

At 5:00 p.m. she unexpectedly began breaking out in hives.

Nurse Used Her ID Card to Obtain Patient's Medication For Herself

To obtain a dose of Benadryl for herself the nurse went to the medication room, swiped her ID card and entered a patient's identification data. The equipment dispensed an IV dose of Benadryl, which was not what she wanted, so she disposed of the medication and entered in the patient's records that it had been wasted so that the patient would not be billed for it.

Then the nurse swiped her card again, entered the same patient's data and obtained a Benadryl pill which was what she wanted. The patient was eventually billed \$4.25 for the medication.

Another nurse, surprised to see that the nurse had not gone home, looked into the medication room to check on what she was doing there. The computer screen on the medication dispensing unit seemed to indicate it had just been used. She told her supervisor what she saw.

The electronic record was checked and it was confirmed that the nurse in question had used her card and a patient's identification to obtain medication for her own use. She was fired a few days later.

The Court of Appeals of Wisconsin ruled the hospital had grounds to fire the nurse for misconduct.

The nurse's only argument in her defense was to raise the question why anyone would risk their job stealing something that would cost less than a dollar if purchased over the counter at retail. That argument ignored the hard evidence that she had, in fact, self-medicated on the job with a patient's medication, an offense serious enough to justify termination regardless of the dollar amount involved. Grall v. State, 2011 WL 1991673 (Wis. App., May 24, 2011).

Drug Screen: Nurse Fired For Falsifying Information.

A nurse who had been working through an agency applied for a position working directly for the hospital.

She gave a sample for a required drug screen and started working as a hospital employee before the results came back. When the results were delayed, indicating that something had been found, the nurse was confronted and disclosed she was on methadone as part of her treatment for chemical dependency.

She had stated on her employment application she was not taking any medications, a false statement, and she was fired.

The nurse was fired for falsifying information on her employment application.

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The majority of the judges on the Court of Appeals of Ohio who decided the case against the nurse were satisfied that the nurse was fired for falsifying information on her employment application.

One judge dissented from the majority opinion, insisting the nurse's lawsuit had raised legitimate questions about disability discrimination.

Chemical Dependency Is A Disability

Being a person in recovery for chemical dependency is considered a disability for purposes of disability discrimination law. Federal and state laws expressly protect a successfully rehabilitated drug abuser from discrimination.

This nurse had been working ten months at the hospital as an employee of a nursing agency taking care of critically ill patients in the ICU without any apparent problems. All the while she was strictly adhering to a monitored recovery program which included counseling and random drug tests. If the nurse was fired for her disability, revealed by disclosing her methadone use, that would have been illegal discrimination, the dissenting judge believed. Wagner v. Regional Med. Ctr., 2011 WL 2448732 (Ohio App., June 20, 2011).