

Nursing License: Experts Must Define The Standard Of Care.

After the alarm sounded several times a nurse in the neonatal intensive care unit turned off the alarm on one of the infant's cardiac monitor, but rotated the screen so she could see it and remained close nearby.

While the alarm was off the parents who were staying with the infant saw the heart rate drop several times and notified the nurse. That led to a complaint to the hospital which led to a complaint by the hospital to the State Board which resulted in the nurse's license being revoked.

The hospital's written internal protocol was that the alarm could only be turned off while directly caring for the infant, taking vitals or bathing. The actual practice had been to permit the alarm to be turned off briefly if the nurse stayed close by, but an email had gone out saying that that practice was no longer to be tolerated.

The hospital's internal nursing protocols do not define the standard of care for purposes revoking a nurse's license.

Expert testimony is necessary.

MISSOURI COURT OF APPEALS
January 8, 2013

The Missouri Court of Appeals ruled that the State Board violated the nurse's rights by revoking her license.

There was considerable confusion about what exactly was the hospital's protocol for this situation.

The State Board has authority only to revoke a nurse's license for incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of professional duties. The hospital's internal protocols do not define the legal standard of care for a nurse. That has to be established by testimony from outside independent experts. Luscombe v. Missouri State Board, __ S.W. 3d __, 2013 WL 68899 (Mo. App., January 8, 2013).

Sexual Harassment By Patient: Court Dismisses Nurse's Case.

The employer's response to the nurse's complaint was reasonable and adequate.

The nurse filed an adverse incident report stating that she had been sexually harassed by a patient the first time she cared for him and again two days later.

The nurse's clinical manager did not interview her. She went forward on the assumption it was true.

The nurse's clinic manager met with the patient when he came in a few days later and told him he had to sign a behavioral contract to continue his dialysis treatments at the clinic.

He agreed he could be discharged or transferred if there was any more inappropriate behavior.

The clinic manager told the charge nurse not to assign the nurse to this patient and saw to it that those who scheduled his appointments knew not to schedule him when the nurse would be in the facility. Their presence in the clinic did sometimes overlap by half an hour.

There has to be a balance struck between the employee's rights and the patient's right to receive treatment.

UNITED STATES DISTRICT COURT
HAWAII

February 11, 2013

A nurse working in a dialysis clinic complained to her supervisor and later filed a lawsuit over sexual harassment by a male dialysis patient.

The patient reportedly made several lewd and suggestive comments during the initial interview and then touched the side of her breast and her back during the first dialysis treatment and then continued with the verbal acting out when he came in for his next dialysis session two days later.

Clinic's Response Was Prompt and Appropriate

The US District Court for the District of Hawaii dismissed the lawsuit because the clinic met its legal responsibilities.

The Court said that the facility's legal responsibilities began as soon as the nurse made her superiors made aware of the situation through the incident report she handed in after the second episode.

The Court accepted the charge nurse's testimony that if she had been informed sooner, right after the first session with the patient, she would not have assigned the nurse to care for him again.

The clinic manager, as soon as she got the incident report, met the patient and required him to sign a behavioral contract acknowledging he would be discharged if he acted out again.

The manager felt she did not need to take the usual first step of interviewing the victim, as the manager fully accepted as true what was in the incident report.

The nurse was never assigned care for the patient again and an effort was made to schedule him to minimize as much as practicable him and the nurse even being in the building at the same time.

Patient's Needs

Must Be Taken Into Consideration

The Court pointed out that there were very limited options in the specific locality for places the patient could go to receive his needed dialysis treatments.

Even when a patient has acted out inappropriately, the patient's own needs have to be taken into consideration in fashioning a remedy to protect the patient's caregivers from possible further inappropriate contacts, the Court said. Mariano v. Liberty Dialysis, 2013 WL 560893 (D. Hawaii, February 11, 2013).