

LEGAL EAGLE EYE NEWSLETTER

September 2013

For the Nursing Profession

Volume 21 Number 9

Social Media: Employer Obtained Facebook Wall Posting, Did Not Violate Nurse's Rights.

A nurse sued her employer for violation of her privacy rights after her employer learned of a private posting on her Facebook wall which seemed to demonstrate an unacceptably callous attitude for a nurse to harbor toward a patient's safety and welfare.

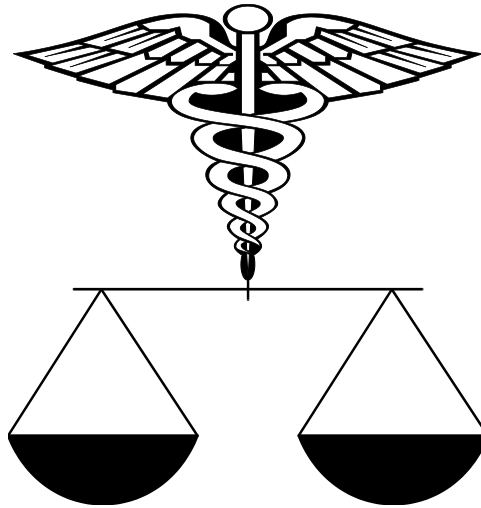
That is, one of her private Facebook wall postings criticized paramedics who resuscitated the suspect in a publicized mass shooting, rather than just letting him die, and further criticized the marksmanship skills of the responding police officers who failed to kill him outright in the first place.

The nurse was suspended with pay for two days, then reinstated without further ado. Her supervisors apparently thought twice about potential backlash because of her status as a union activist.

Federal Law Protects Private Social Media Postings

The US District Court for the District of New Jersey looked carefully at the US Federal Stored Communications Act (SCA). That law was passed back in 1986 to protect privacy rights as to electronic communications.

The courts are now facing an emerging legal subject area, assessing the extent to which social media postings are protected by the SCA from employer incursions and negative personnel actions based on their content.



An unauthorized party, such as an employer, is not permitted to access private Facebook wall postings.

However, as long as the employer does not coerce a friend to do so, an authorized friend can access a private wall posting and pass it along to an unauthorized party, such as an employer, without the employer breaking the law.

UNITED STATES DISTRICT COURT
NEW JERSEY
August 20, 2013

The Court, in a scholarly opinion, ruled that private Facebook wall postings are covered by the SCA.

The nurse designated her wall postings private, that is, she chose a setting that they could only be accessed by her Facebook friends. The wall was not accessible to the general public who might happen to log on, and thus the wall was considered a private as opposed to a public electronic communication for purposes of the SCA.

The problem for the nurse was, however, that she had more than three-hundred so-called friends on Facebook.

While none of her supervisors were her friends several of her co-workers were. That left open the possibility that what did happen could happen. One of her co-worker friends was asked by her supervisors to access the nurse's private Facebook wall and then fill them in as to the contents.

If the friend was coerced, the friend would not have been considered authorized under the SCA to access her private wall and divulge the contents. Although the nurse's lawsuit alleged such coercion, there was no proof.

Her so-called friend accessed private information she was authorized to see and legally passed it on. ***Ehling v. Monmouth-Ocean, ___ F. Supp. 2d ___, 2013 WL 4436539 (D.N.J., August 20, 2013).***

Inside this month's issue...

September 2013

New Subscriptions
See Page 3

Social Media/Privacy Rights/Facebook Wall - Nursing/Skin Care
Patient's Fall/Nursing Standard Of Care - Medical Confidentiality
Nurses Aide/Self Medication/Document Falsification/Firing
Nurse's License Revocation/Medication To Non-Patient
Psychosocial Nursing/Disability Discrimination - LPN/Patient Abuse
Nursing Home/Whistleblower - Nurse/Race Discrimination
Family And Medical Leave Act/Nurse/Self-Diagnosis
Operating Room/Hot Medical Device - Neuro Intensive Care Nursing