

Threatening Language: Court Upholds LPN's Firing For Misconduct.

An LPN employed in a nursing home was arrested and jailed for disturbing the peace and resisting arrest while off the job. In jail she complained of a physical ailment and was seen by the jail nurse. Not satisfied with the attention the jail nurse was giving her, she began to disparage the jail nurse's nursing skills.

The LPN recognized the jail nurse as the daughter of a resident the LPN cared for at the nursing home. She verbalized a threat of harming the mother. The next day the jail nurse phoned the nursing home's administrator and the LPN was fired, solely for her threatening remark.

A nurse made the statement to another nurse, "You would not want your mother treated bad or hurt, would you?"

A threatening remark by a nurse to a patient's family member with reference to the patient is misconduct warranting a nurse's termination for cause.

SUPREME COURT OF MISSISSIPPI, 2000.

The case worked its way through the administrative hearing process and the courts all the way to the Supreme Court of Mississippi, with rulings all up the line that the LPN's threat was misconduct which justified termination and precluded the right to unemployment benefits.

The court said a threat verbalized by a nurse toward a patient is serious misconduct even if the threat is not made directly to the patient or not while on duty. ***Johnson v. Mississippi Employment Security Commission***, 761 So. 2d 861 (Miss., 2000).

Resident Abuse/Intimidation: How Is It Defined By Law?

The law does not have to be any more specific. Nursing personnel know what the words abuse and intimidation mean.

Words used in laws which regulate specific trades and businesses are given the meaning they convey to informed persons in the particular trade or business.

The meaning of resident abuse or intimidation of a nursing home resident is determined by the commonly accepted standards of nursing professionals working in nursing homes.

Those standards are part of the ethics of their profession, and any person practicing in the nursing profession should know what the law means by resident abuse and intimidation.

Officials in the department that oversees nursing homes are also members of the profession and are very familiar with professional standards defining appropriate and inappropriate nursing conduct.

Their expertise allows them to apply the standards of their profession on a case-by-case basis to charges against a nursing home employee of abuse or intimidation.

APPELLATE COURT OF CONNECTICUT, 2000.

Anurse's aide was charged with verbal abuse and intimidation of a nursing home resident for using vulgar and demeaning language to refer to the resident's private areas during incontinence care. She was fired and her name was placed in the state registry of persons dismissed from direct care positions for patient abuse.

The aide appealed claiming the legal definitions of abuse and intimidation were too vague. She first filed an administrative appeal with the Department of Public Health and Addiction Services, then appealed the Department's decision to court. The Appellate Court of Connecticut sided with the Department and validated the charges of abuse and intimidation.

Due Process of Law

As a general rule, before the legal system can punish a person the law must define the wrongful conduct for which a person can be punished so the person will have known ahead of time what was expected and what would not be tolerated.

If a law defining wrongful conduct is overly vague, the law can be thrown out as unconstitutional along with the person's criminal conviction or other punishment.

Standards of the Nursing Profession

The court concluded that terms no more specific than abuse, intimidation, neglect, etc., in the statutes which regulate the conduct of nursing home employees are not overly vague. There is no need for the law to define those terms in any greater detail, the court ruled.

Terminology in the laws pertaining to nursing personnel refers to the professional standards of the nursing profession. Nursing personnel cannot complain that they do not know what abuse and intimidation are, the court ruled.

Nurses who supervise other nurses and non-licensed staff and nurses in government who decide these cases can interpret the wording of the law on a case-by-case basis, with reference to the standards of the profession. ***Salmon v. Dept. of Public Health***, 754 A. 2d 828 (Conn. App., 2000).