

Unfair Labor Practices: Aide Fired, Urged Patients To Support Union's Cause.

The National Labor Relations Board ruled that a nursing home located in Pennsylvania was guilty of unfair labor practices for disciplinary actions taken against a nursing assistant who was an outspoken union supporter and had urged patients to support the union's cause.

The US Court of Appeals for the District of Columbia upheld the Board's ruling.

The Board determined that the nursing home first acted unlawfully by confronting the aide and taking her aside for an interrogation session in which she was allegedly told to stop worrying about the union and start worrying about her job. That amounted to illegal coercion in violation of the National Labor Relations Act.

The nursing home also confiscated pro-union literature from the aide, another violation of the aide's rights guaranteed by Federal law.

The aide was expressly warned to cease and desist from her union activities. She was specifically warned to stop urging the nursing home's patients to support the union cause.

Then she was fired for violating that, her last and final disciplinary warning which she had been told could lead to her termination.

The Court pointed out that the National Labor Relations Act makes it an unfair labor practice to discourage membership in any labor organization by discriminating in regard to hire or tenure of employment.

The nursing home admitted that her union activities were a motivating factor in her termination. The nursing home nevertheless argued in its defense that there were other non-union-related disciplinary issues with this aide and that her firing for urging union support from patients was only the final culmination of that process.

The Court rejected that argument. Other employees with similar disciplinary histories who were not involved in pro-union activities were not fired over their other issues.

That confirmed for the Board that the aide's protected pro-union activities were not just one factor but basically the sole reason the nursing home decided to terminate her. The nursing home would have won its case if it could have proven that other factors were the principal motivation for firing her, but that was not what happened here, in the Court's judgment. **Manor Care v. N.L.R.B.**, ___ F. 3d ___, 2011 WL 5839631 (D.C. Cir., November 22, 2011).

Sexual Abuse, Mandatory Reporting: Nurse Did Not Report, But Court Orders License Restored.

An advanced practice RN had her license placed on suspension for two years after it came to the attention of her state board that she did not report to law enforcement what she heard about two boys, acquaintances of her grandchildren, having sexually abused three younger children.

Her adult daughter told her what she heard from her children, the nurse's grandchildren, that their young friends had told their own mother.

The nurse contacted the victims' mother and strongly urged her to take the children to a local children's hospital for evaluation and treatment, but she did not report to local law enforcement what she had heard.

The Superior Court of Delaware looked at the state's mandatory reporting law and ruled in the nurse's favor.

It is necessary to look closely at how the sexual abuse mandatory reporting statute is worded and interpreted.

The Court's interpretation is that the mandatory reporting statute, as it was worded at the time of the events in this case, referred only to information which a nurse or other professional on the list obtains in connection with professional practice.

SUPERIOR COURT OF DELAWARE
November 17, 2011

A long list of professionals who come in contact with children in their professional capacities, physicians, nurses, psychologists, social workers, school employees, etc., are required to report known or suspected child sexual abuse to law enforcement. Failure to do so is a crime and grounds for discipline against the professional's license.

The Court ruled, however, that suspension of the nurse's license was not justified. The Delaware mandatory reporting law was recently amended to include *all persons* in the list. However, as the law was worded and interpreted by the courts at the time of the events in question it only mandated reporting of abuse learned about by a professional on the list in connection with professional practice. **Gillespie v. Del. State Bd. of Nursing**, 2011 WL 6034789 (Del. Super., November 17, 2011).