

Whistleblower: Nurse's Case Dismissed.

An RN with twenty-four years psychiatric nursing experience worked on the geriatric psychiatry unit of a private psychiatric hospital.

She began to suspect the medical director was engaged in fraudulent and illegal activities. She shared her suspicions with her nursing director, who told her to start gathering documentation to corroborate her suspicions. She continued to make copies of the daily census and copied selected material from patients' charts even after her nursing director was terminated.

The nurse herself was terminated after she used information from the census to contact a patient's family member. Contacting a family member of a psychiatric patient without written authorization from the patient is considered a breach of medical confidentiality.

The US False Claims Act prohibits employer retaliation against a healthcare employee who reports fraudulent billings submitted to Medicare or Medicaid by the employer.

UNITED STATES DISTRICT COURT
OHIO
March 26, 2013

The US District Court for the Southern District of Ohio dismissed the nurse's whistleblower case.

The nurse assumed but never verified that the physician or the facility actually billed Medicare or Medicaid for the things about which she had her suspicions.

A whistleblower has a very limited exception to medical confidentiality to copy confidential patient information that the whistleblower turns over to a health oversight agency or public health authority. This nurse never turned any of it over to any agency or authority. A whistleblower can also bring confidential information to an attorney for legal advice about available options. Cabotage v. OHP, 2013 WL 1281940 (S.D. Ohio, March 26, 2013).

Discrimination: Nurse Not Basis For Comparison In Tech's Case.

A minority cardiac monitor tech sued the hospital for race discrimination after she was fired for substandard job performance.

Like any other discrimination case, the success of her lawsuit depended on being able to bring proof to court that her employer had treated her differently than a similarly situated non-minority employee.

For comparison she pointed to a staff nurse on the unit who was not a minority and was never disciplined for not personally seeing to it that the patients were connected to their cardiac monitors, while she was written up and fired for that.

The tech's job is constant monitoring of patients' cardiac monitors. It includes making sure the leads stay connected and detaching and reattaching the leads when necessary.

A nurse can look at the monitors, check that the leads are connected and disconnect and reattach them as necessary.

However, a nurse's job responsibilities are significantly larger and do not necessarily include tasks that are primarily delegated to non-licensed staff.

UNITED STATES DISTRICT COURT
ILLINOIS
April 1, 2013

The US District Court for the Northern District of Illinois ruled it is not discriminatory to expect a non-licensed technician to stick closely to specific tasks he or she is there to perform that a nurse would not necessarily be disciplined for not doing. Lockhart v. St. Bernard Hosp., 2013 WL 1340346 (N.D. Ill., April 1, 2013).

Medications Left Unattended: Nurse Terminated For Misconduct.

The nurse was the weekend RN nursing supervisor on the facility's psychiatric unit which housed Alzheimer's and other dementia patients.

While she was making her rounds distributing medications to her patients she received an emergency page that another nurse's patient on another floor needed to have a trache tube reinserted. She got the page because she was the only person on duty in the facility at the time who was qualified to reinsert a trache tube.

She set her patient's medication down on the patient's bedside table and left the room right away to help the other patient on the lower floor.

A CNA found the medication on the table and reported to the facility's administrator that she had found the patient's medication in the patient's room. It came to light that the nurse had also left the medication cart unlocked in the hall right outside the patient's room.

The nurse was terminated for misconduct.

The nurse was aware of the facility's policy that medication could not be left unsecured in a patient's room on the psychiatric floor, yet made a hasty decision to violate that policy.

COURT OF APPEAL OF LOUISIANA
May 8, 2013

The Court of Appeal of Louisiana ruled that the nurse was guilty of misconduct justifying her termination.

The Court said it was no excuse that she had just been summoned to a potentially life-threatening emergency when she made the hasty decision to ignore the facility's policies of which she was aware that medication could not be left accessible to a patient and that the medication cart could not be left unlocked while unattended. Dyer v. Nursecall, __ So. 3d __, 2013 WL 1890717 (La. App., May 8, 2013).