

## Whistleblower: Nurse's Firing Upheld.

A nurse working in a nursing home became concerned about the number of residents with respiratory and intestinal infections on the wing where he worked.

He began sending out emails to co-workers and then to management at the facility. His campaign escalated to complaints to the local county board of health, the state board of health and the news media at the local and state levels.

He removed confidential patient medical records from the facility and faxed them to a TV reporter after only partially redacting patient-identifying information.

Eventually he was fired and then filed a lawsuit alleging violation of his rights as a whistleblower.

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***The state's Conscientious Employee Protection Act prohibits employer retaliation against an employee who discloses an activity, policy or practice of the employer which is believed to be a violation of the law.***

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
March 22, 2013

The Superior Court of New Jersey, Appellate Division, dismissed his case.

The Court pointed out that the state's whistleblower law gives an employee the right to sue if he or she was the victim of retaliation for complaining about or reporting a violation of the law by the employer.

However, the nurse could not identify any specific state or Federal statute or regulation he believed his employer had violated. That was fatal to his lawsuit. A number of nursing home residents having respiratory or intestinal infections does not necessarily implicate a violation of the law.

The nurse himself clearly violated patient-confidentiality laws by removing information from the patients' charts from the facility and blatantly broke the confidentiality agreement he signed when hired. Hitesman v. Bridgeway, \_\_ A.3d \_\_, 2013 WL 1163791 (N.J. Super., March 22, 2013).

## Whistleblower: Nurse's Testimony Was Damaging.

After a patient died in the hospital the nurse who had been assigned to care for the patient told the daughter that the cause of death could have been a morphine overdose. The family sued the hospital.

While the lawsuit was pending the nurse was subpoenaed to testify in a pre-trial deposition in which she was interrogated in detail about the patient's death.

She testified she believed the patient was sleeping soundly when she checked on him. Right away the family's attorney confronted her with her progress note that the patient was alert and oriented, implying that she neglected to assess her patient who could, in fact, have been dying from an overdose at the time, and then charted something else to cover up her mistake.

The nurse was fired and then sued the hospital for violation of her rights as a whistleblower.

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***An employee cannot be disciplined or fired in retaliation for testifying in a trial, deposition or other legal proceeding, even if the testimony is damaging to the employer.***

SUPREME JUDICIAL COURT OF MAINE  
March 21, 2013

The Supreme Judicial Court of Maine clarified the law and sent the case back to the lower court to determine exactly why the nurse was fired.

The hospital could fire the nurse for suggesting to the daughter she had grounds for a lawsuit or for her incompetence in this patient's care or her false charting which were first revealed by her testimony.

However, the hospital could not fire her over the simple fact that she testified in a legal proceeding, the Court said. The nurse would be protected by the express language of the state's whistleblower law from retaliation for testifying in a legal proceeding as she was required by law. Trott v. Goodall Hosp., \_\_ A.3d \_\_, 2013 WL 1154061 (Me., March 21, 2013).

## Latex Allergy: No Reasonable Accommodation Was Possible, Nurse Terminated.

After many years of service as a valued employee in different roles at the hospital the nurse had an episode that was eventually diagnosed as an acute reaction to chronic latex exposure.

At the time of her acute episode the nurse was working in a non-nursing data-entry position in the surgery office. That job was cut for budgetary reasons before it was known that she had a latex allergy. Her subsequent efforts to transfer back as a circulating nurse in surgery were unsuccessful, due to her problem with latex.

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***An employer must make reasonable accommodation to an employee's disability that is known to the employer, as long as the employer can do so without undue hardship to the employer.***

CALIFORNIA COURT OF APPEAL  
April 11, 2013

The California Court of Appeal dismissed the nurse's disability discrimination lawsuit, agreeing with the hospital that she was not able to fulfill the essential functions of a nursing position without some sort of accommodation and there was no accommodation that was reasonable that would enable her to continue working.

There was no realistic or reasonably feasible way to eliminate latex products from the hospital in order to meet this nurse's needs.

Nor was it realistic to transfer her to a home health position, as it was not reasonably feasible or even possible to pre-screen clients' homes and remove all latex products for this nurse's benefit.

The nurse still had rights under California's workers' compensation laws. Anderson v. Catholic Healthcare, 2013 WL 1462058 (Cal. App., April 11, 2013).