

Whistleblower: Nurse's Lawsuit Vindicated.

A young student was seen by the school nurse for a facial injury which he said came from his father intentionally striking him. The nurse contacted the father, who not only admitted but reportedly boasted that he had struck his child.

When she informed the school's headmaster he discouraged the nurse from reporting the incident to social services even after she explained that she had a legal duty to do so.

The nurse reported the incident anyway. Several months later she was terminated for "not being a team player."

The state's whistleblower protection law says that no employer shall take retaliatory personnel action against an employee who objects to or refuses to participate in any activity, policy or practice that presents a danger to the health and safety of the public in violation of a law, rule or regulation.

NEW YORK SUPREME COURT
APPELLATE DIVISION
April 12, 2012

The New York Supreme Court, Appellate Division, ruled that the nurse's lawsuit for wrongful and retaliatory termination fit squarely within her legal rights under the state's whistleblower protection law.

The state's social services law requires certain professionals, including school nurses, to report when there is reasonable cause to suspect that a child with whom they interact in their professional or official capacity is an abused or maltreated child.

Further, a school is not permitted to take retaliatory action against an employee who has reasonable cause to suspect that a child is abused or mistreated and reports that suspicion as required by law. Villarin v. Rabbi Haskell School, ___ N.Y.S.2d ___, 2012 WL 1214695 (N.Y. App., April 12, 2012).

Nurse Whistleblower: Court Rules Allegations Too Vague, Retaliation Lawsuit Dismissed.

A registered nurse was placed on administrative leave along with two other nurses involved in an incident in which a patient became unresponsive in the dialysis clinic where they worked and died the same day shortly after being taken to the hospital.

The nurse was never allowed to return to work. She later claimed protection under the state's whistleblower law from being terminated for speaking out to the clinic's agents investigating the incident about what she considered to be improper action by other nurses at the clinic which she implicated as the cause of the dialysis patient's death. That is, when the patient became unresponsive he was given a transfusion of a blood product that allegedly was not appropriate for him.

The US District Court for the Western District of Tennessee ruled in the clinic's favor and dismissed the nurse's retaliation and wrongful-termination lawsuit.

The Court's ruling hinged on correct interpretation of the phrase "illegal activity" in the state's whistleblower protection law.

JCAHO Patient Safety Goals

The nurse's lawsuit pointed to a Patient Safety Goal which requires at least two patient identifiers when providing care, treatment or services. She was prepared to testify that her charge nurse did not witness the other nurses giving the transfusion, in her opinion a violation of JCAHO's two-identifiers goal.

The Court did not delve into the correct interpretation of the Patient Safety Goal. JCAHO is merely an independent, non-profit organization which aspires to improve patient-care outcomes. Its goals are not laws, statutes or regulations.

A complaint about a violation of JCAHO patient-safety goals, even if correctly interpreted, is not enough to invoke the protection of the whistleblower law.

Federal Regulations

Seemingly more directly to the point, the nurse's lawsuit also cited chapter and verse of a specific Federal regulation requiring certain facilities to establish and to

Employees are protected by state law from being terminated for refusing to participate in or for refusing to remain silent about illegal activities.

The phrase "illegal activities" refers to violations of the criminal or civil code of the US or the state or any state or Federal regulation intended to protect the health, safety or welfare of the public.

UNITED STATES DISTRICT COURT
TENNESSEE
March 26, 2012

follow policies and procedures for positive identification of blood product recipients and to prevent transfusion reactions.

However, according to the Court, this regulation lies within a subpart of the Code of Federal Regulations which applies to clinical laboratories. Although it pertains directly to the conduct in question the regulation does not apply to a dialysis clinic, as a dialysis clinic does not fall within the definition of "laboratory" as expressly spelled out in the regulations.

Board of Nursing Standards

The state board of nursing's standards for nursing practice, unlike JCAHO's goals, are governmental regulations.

However, the problem with basing a whistleblower case on the board's standards is that they spell out only in general language that nurses are not to cause physical or mental injury to a patient, not to fail to take appropriate action in safeguarding a patient from incompetent health practices, not to engage in acts of dishonesty in the practice of nursing or fail to maintain accurate records for each patient, not precisely what the Legislature had in mind when it enacted the whistleblower law. Drake v. Bio-Medical, 2012 WL 1023016 (W.D. Tenn., March 26, 2012).