

Whistleblower: Court Says Nurse Was Not Fired For Speaking With Investigators.

A patient died in the nursing home while the nurse was on duty as the charge nurse.

The incident was investigated by the state Department of Health. The nurse was among several employees who were interviewed by state investigators.

The investigators checked to see that caregivers at the nursing home had current CPR certifications. The nurse herself had a CPR card with an expiration date that might have been forged. The nurse was suspended, but then was reinstated with back pay several days later. The issue was dropped and the disciplinary write-up was pulled from her personnel file.

However, she was nonetheless written up for failing to notify the resident's physician until after the local police had looked into the circumstances of the death and had found nothing suspicious. The physician should have been notified immediately.

A number of other episodes involving substandard patient care eventually led to the nurse's termination. She sued for retaliation, claiming protected legal status as a whistleblower over the fact she had spoken with Department of Health investigators about the patient's death.

The US Court of Appeals for the Sixth Circuit (Ohio) dismissed her case.

No Evidence of Retaliation

State whistleblower laws say that no employer may retaliate against an employee who reports suspected abuse or neglect or who provides information in the course of a government agency investigation of suspected abuse or neglect.

The central question in this case was the employer's motivation for firing the nurse. Was it the fact she had spoken with state investigators, or was it the fact there were multiple disciplinary write-ups over patient care deficiencies?

The Court concluded that the facility had carefully investigated and thoroughly documented the underlying facts behind the disciplinary write-ups and had legitimate grounds to fire the nurse, apart from the fact she had spoken with state investigators. **Tingle v. Arbors**, __ F. 3d __, 2012 WL 3711439 (6th Cir., August 29, 2012).

Can the nurse show that her disciplinary write-ups were only a pretext behind an illegal motivation on her employer's part to fire her for speaking with state investigators looking into a patient death in the facility?

If the write-ups were just a pretext, then the nurse has rights as a whistleblower.

If the employer has an honest belief that there are valid independent grounds for disciplining or firing an employee, apart from the fact the employee has reported abuse or neglect or participated in a governmental investigation of suspected abuse or neglect, then the employer is on solid legal ground.

The employer's claim of an honest belief is necessarily tied to the nature and thoroughness of its investigation and documentation of the disciplinary process.

Did the employer make a reasonably informed and considered decision? Can the employer point to the particular facts upon which its decision was based?

The nurse cannot prove her former employer did not honestly believe there were grounds to terminate her.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
August 29, 2012

Cardiac Care: Court Does Not Find Nurses Liable In Patient's Death.

The eighty-one year-old patient was brought to the hospital's emergency department with chest pain, left-arm numbness, back discomfort and nausea. A cardiologist admitted her as an inpatient.

The next day the cardiologist did a diagnostic cardiac catheterization, found significant blockage and inserted a stent.

The cardiologist ordered Heparin and Plavix. The nurses did not give the Plavix for almost twenty-four hours.

At 6:04 a.m. the day after the catheterization an EKG revealed that the patient had had a heart attack. The physician was not notified and did not find out until he came in on rounds at around 9:00 a.m.

The patient's condition continued to deteriorate. She coded the next day, was put on no-code status and passed away.

Assuming the nurses were negligent for delaying the Plavix almost twenty-four hours after the first catheterization and for not reporting the abnormal EKG promptly to the physician, there is no proof that caused or even contributed to the patient's death.

SUPREME COURT OF ARKANSAS
September 13, 2012

The Supreme Court of Arkansas accepted expert testimony faulting the nurses for negligence in the patient's care.

However, there was also ample evidence in the case that the patient was suffering from persistent hypotension, renal failure, liver failure, acidosis and cardiogenic shock.

There was no solid proof that the nurses giving the Plavix or notifying the physician right away about the EKG would have made any difference in the outcome, the Court ruled. **Neal v. Sparks Reg. Med. Ctr.**, 2012 Ark. 832, __ S.W. 3d __, 2012 WL 4017368 (Ark., September 13, 2012).