

Whistleblower: Court Finds A Legal Basis For Nurse's Case.

Soon after the hospital opened a cardiac care unit the overall census of critically ill and mechanically ventilated patients increased to the point that these patients were being placed on medical surgical floors due to an insufficient number of critical care and intensive care beds.

An LPN with twenty-plus years at the hospital began to complain through the union about the increasing workloads for the nurses caused by this practice and the increasing safety risks for the patients posed by insufficient numbers of nurses caring for these patients. Many of the med/surg nurses on non-critical floors were relatively inexperienced new graduates.

LPN Fired After

Mix-Up With Physicians' Orders

A physician ordered a new PICC line for one of her patients and the LPN entered it on the computer system. A different physician then ordered it held. The LPN told a unit secretary who had floated in that day from pediatrics to make the change on the computer, but the unit secretary did not do it and the PICC line was erroneously started anyway. The LPN was fired.

The LPN sued the hospital. In her lawsuit she claimed her termination over a mix-up that was not necessarily her fault after twenty-four years of exemplary service was a pretext to cover up a retaliatory motive on the part of hospital management.

She insisted she had the right to legal protection as a whistleblower for her complaints about quality of care and patient safety issues.

New York Supreme Court, Appellate Division, agreed that the LPN's case stated valid grounds for a whistleblower lawsuit.

Her lawsuit pointed to a specific section of the New York Code of Rules and Regulations which requires a hospital to provide nursing services that meet the care needs of all patients in accordance with established standards of nursing practice and to provide sufficient nurse staffing to insure immediate availability of a professional nurse for bedside care.

The LPN could not be made a victim of employer retaliation for complaining about a violation of the law. **Minogue v. Good Sam. Hosp.**, __ N.Y.S.2d __, 2012 WL 4513064 (N.Y. App., October 3, 2012).

The state's Whistleblower Law gives legal rights to an employee who discloses or threatens to disclose an employer activity or practice which is in violation of a law, rule or regulation and which creates a substantial and specific danger to the public health.

A health care employee also benefits from a statute which gives a healthcare employee the right to sue his or her employer or former employer for damages if the employee suffers retaliation for disclosing or threatening to disclose to a supervisor or to a governmental agency an activity, policy or practice which the employee believes in good faith constitutes improper quality of patient care, that is, a violation of a law, rule, regulation or agency ruling, where the violation relates to a substantial and specific danger to public health or safety or the health of a specific patient.

State and city rules and regulations require hospitals to maintain nursing services to meet patients' needs and to provide for immediate bedside care by a professional nurse for any patient who may require such care.

NEW YORK SUPREME COURT
APPELLATE DIVISION
October 3, 2012

Discrimination: Court Finds Basis For Nurse's Case.

The nurse had been an insulin-dependent diabetic since age five. She had been working at the hospital eighteen years, taking short breaks to test and to inject insulin and to eat snacks, which did not seem to interrupt or affect her work.

She began to suspect the hospital had drawn up a list of old and sick nurses to weed out and that she was on the list.

She was approached by the physician chief of surgery and candidly answered the questions he had about a particular physician. After the subject physician complained to hospital management the nurse was fired. She sued for age and disability discrimination.

The reason given for the nurse's termination was that she went outside the hospital's set chain of command for nursing advocacy. However, the chain of command policy did not apply to what actually happened.

UNITED STATES DISTRICT COURT
VIRGINIA
October 12, 2012

The US District Court for the Western District of Virginia found grounds for the nurse's lawsuit.

The hospital's policy for nursing advocacy required a nurse to go to up the chain of command to the charge nurse, nurse unit manager and house nursing supervisor before any of the medical staff.

It would be a clear breach of the chain of command policy for a nurse to go straight to the chief of surgery with concerns about a physician's performance, but that did not happen. He came to her and she was not out of line to speak with him.

The hospital's stated reason for the nurse's termination was so transparently wrong that discrimination was most likely the true underlying motivation, the Court said. **Horne v. Clinch Valley Med. Ctr.**, 2012 WL 4863791 (W.D. Va., October 12, 2012).