LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Workplace Injury: Nurse Can Be Fired For Threatening Lawsuit, Court Says.

A nurse slipped and fell on a puddle of water that dripped from the ceiling on to the floor of the area where she worked in a nursing home.

Worker's Compensation
Exclusive Legal Remedy vs. Employer

The Appeals Court of Massachusetts pointed out that in Massachusetts, as in other states, the worker's compensation laws bar an employee from suing his or her employer for negligence causing an on-the-job injury.

Under worker's comp the employee gets medical expenses, loss of income and permanent partial or total disability from a self-insured employer, from the employer's worker's comp insurance carrier or from the state worker's comp system, with appropriate proof of loss, without regard to whether the employer was negligent and often even if the employee was negligent.

Although the worker's comp system bars an employee from suing his or her own employer, it does not prevent an employee from suing a party other than his or her employer for that party's negligence which caused the employee's on-the-job injury.

Such a negligence lawsuit could compensate the employee for pain and suffering, mental anguish and emotional distress, loss of earning capacity and loss of spousal consortium, elements of damages in civil lawsuits which are not paid out as benefits under worker's comp.

The nurse consulted an attorney, who put the nursing home's landlord on formal notice of her intent to sue the landlord for her injuries.

Soon after the nursing home's landlord got the letter from the attorney the nurse was fired. The Court ruled the nurse was not entitled to sue her former employer for wrongful termination.

The law gives employees the right to sue third parties other than their employers for negligence which causes on-the-job injuries.

However, that right is not so strongly valued by the legal system that the law will provide protection from reprisals by employers to the same extent, for example, as healthcare employees are protected from reprisals for blowing the whistle on their employers' practices that compromise patient safety and health. **Santarpia v. Senior Residential, 2014 WL 3891642 (Mass. App., August 11, 2014).**

Arbitration: Court Says Sister Had No Authority To Sign, Arbitration Agreement Ruled Invalid.

Her sister signed the admissions paperwork when the resident was admitted to a long-term care facility.

The paperwork included an agreement to refer any and all legal claims against the facility to arbitration as an alternative method of dispute resolution in place of a lawsuit in a civil court.

Arbitration is usually seen as preferable by potential defendants in healthcare litigation because of significantly lower litigation costs and elimination of exposure to "runaway" jury verdicts.

After the resident passed away the sister filed a civil lawsuit against the nursing facility in the local county circuit court alleging negligence and seeking damages for wrongful death.

The facility countered with a petition to have the case removed from the court docket in favor of arbitration.

The resident was fully competent mentally at the time of admission.

The resident herself should have been given the choice to sign or to decline to sign the arbitration agreement. There was no reason for anyone else to sign on her behalf.

The nursing facility never inquired whether the sister had a power of attorney, which she did not have.

COURT OF APPEALS
OF SOUTH CAROLINA
August 6, 2014

The Court of Appeals of South Carolina ruled the case did not belong in arbitration.

Arbitration requires a valid arbitration agreement. The sister signed the arbitration agreement instead of the resident herself. That was not valid because the resident herself was fully competent and she herself should have been offered the choice to sign or to decline. Her sister had no power of attorney giving her authority to act.

The burden of proof is on the healthcare facility to show that a non-patient signing an arbitration agreement had a power of attorney or some other evidence of authority to act as agent for the patient or that the patient was not competent and the signer had a durable power of attorney. **Scott v. Heritage Healthcare, 2014 WL 3845113 (S.C. App., August 6, 2014).**

More legal Information for nurses is available at Legal Eagle Eye Newsletter for the Nursing Profession Home Page.