LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

US False Claims Act: Court Sees A Basis For Nurse's Lawsuit.

The US False Claims Act allows a private individual to file a civil lawsuit to recoup money paid by the US Federal government to a person or corporation guilty of obtaining the money from the government by fraud.

If the lawsuit is successful in proving fraud, the private individual is entitled to keep a percentage of the funds recouped, which in some cases has been tens of millions of dollars, while the US Federal government gets the rest.

While employed in a dialysis center where she no longer worked when she filed her lawsuit, a nurse noticed that her facility was "harvesting" the remaining unused portions of a certain medication from single use vials and using it with its patients.

Use of this medication on a so-called harvested basis had been approved by the US Department of Health and Human services, if all of a certain set of conditions were met.

It was alleged in the nurse's lawsuit that these conditions, in fact, were not being met, but that was only a side issue that was not directly relevant to the nurse's lawsuit.

Directly relevant was the fact that the facility's records showed that an average of 50 patients were being treated each day with the medication, while only 29 to 35 single-use vials of the medication were being purchased per day over the same time period.

The facility billed each of its Medicare patients for a single-use vial but apparently was not using a new single-use vial with each patient. The patients who were getting doses of so-called harvested medication provided the facility with a financial windfall.

Again, the issue was not whistle-blowing about a practice that violated Medicare patient-care standards or one that posed a risk to patient health and safety. The issue was the facility was billing Medicare for something, a new single-use vial for each patient, which it was not providing.

The US Court of Appeals for the Third Circuit ruled that the evidence in the nurse's lawsuit met the False Claims Act's very strict requirement for solid proof of a fraudulent billing practice actually being carried out. **Foglia v. Renal Ventures, __ F. 3d __, 2014 WL 2535339 (3rd Cir., June 6, 2014).**

Pregnancy Discrimination: CNA Fired Before Restrictions From Her Physician Took Effect.

The facility had a policy that light duty was given to care-giving employees only to accommodate medical restrictions from work-related injuries.

The court record showed that the facility enforced this policy on an even-handed basis with all its employees.

Employees with medical restrictions due to other causes, including pregnancy or non-work related injuries, were entitled under company policy to apply for unpaid disability or personal leave. They could ask for Family and Medical Leave Act leave if employed at the facility for more than a year.

The above are legitimate and lawful employment practices, according to the US District Court for the Northern District of Illinois.

The certified nursing assistant in question had a letter from her physician that due to her pregnancy she was unable to lift, push or pull more than twenty pounds. That was incompatible with her direct patient-care duties.

The CNA was fully able to work until her 20th week of pregnancy, according to her own physician.

A jury could reasonably conclude that she was let go in her 15th week for a reason other than physical limitations, namely discrimination based on her pregnancy.

An employer cannot make decisions about a pregnant employee's capabilities.

UNITED STATES DISTRICT COURT
ILLINOIS
July 15, 2014

The CNA got a second letter from her physician. It clarified that her restrictions would not come into effect for five more weeks, until her 20th week of pregnancy. Nevertheless she was not scheduled further for work and was fired when she did not apply for leave.

The Court saw grounds for a pregnancy discrimination lawsuit.

It is discriminatory for an employer to rely on the employer's own assumptions about a pregnant employee's capabilities *vis a vis* her pregnancy, apart from the judgment of the employee's own physician, when taking action affecting a pregnant employee. **Cadenas v. Butterfield Health, 2014 WL 3509719 (N.D. Ill., July 15, 2014).**