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HIPAA: Confidential Information Disclosed To Patient's Supervisor, Nurse Terminated.

While on the job at the hospital a radiology technician twice had to be escorted to the hospital's emergency department. The second time he was officially admitted as a patient.

He had been found slumped over a desk, his speech was slurred and he was pale and sweaty.

A physician and a physicians assistant examined him and ordered a number of tests, including a blood alcohol. The blood alcohol came back at .242.

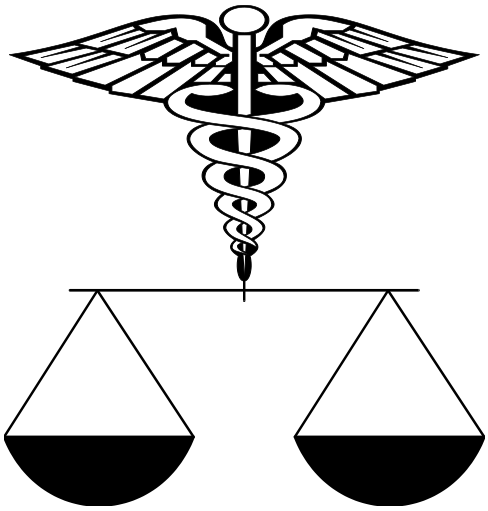
The physicians assistant told him he would not be allowed to leave until he got someone else to drive him home. The physicians assistant phoned hospital security to get an officer to come and watch him to make sure he did not leave until a designated driver arrived.

Nurse Revealed Blood Alcohol To Coworker's Supervisor

An emergency department nurse was also assigned to the patient's care. When the radiology tech's supervisor came to check on him, the nurse verified that she was, in fact, her patient's supervisor, then told her that the patient had a .242 blood alcohol.

The radiology supervisor immediately reported the emergency department nurse to human resources, who in turn contacted the chief nursing officer.

After an investigation, the nurse was terminated.



Once the radiology technician was admitted as a patient in the emergency department, he was the emergency department nurse's patient and was no longer simply a coworker.

Any obligation the nurse might have had to report an unsafe condition posed by an intoxicated coworker was superseded by HIPAA's strict rules of patient confidentiality.

COURT OF APPEALS OF OHIO
April 20, 2015

The Court of Appeals of Ohio ruled the nurse did not have the right to sue the hospital for wrongful termination. Her termination was justified for exposing her employer to a violation of the US Health Insurance Portability and Accountability Act (HIPAA).

HIPAA allows disclosure of a patient's confidential health information to persons not directly involved in the patient's healthcare only in certain narrowly defined circumstances.

The so-called whistleblower exception applies when a healthcare facility worker believes in good faith that the facility has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services or conditions provided by the facility potentially endanger a patient or patients, healthcare workers or the public.

Under the whistleblower exception disclosure of a patient's confidential health information can be made to a health oversight agency or public health authority authorized by law to investigate or oversee the relevant conduct or conditions of the facility, or to an appropriate health care accreditation organization involving failure of the facility to meet professional standards.

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HIPAA Violation: Nurse Terminated (Continued).

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The whistleblower exception also permits a healthcare worker to disclose a patient's confidential health information to an attorney in the process of obtaining a legal opinion from the attorney as to the worker's options in dealing with the employer's alleged illegal or unprofessional conduct.

Whistleblower Exception Does Not Apply to a Coworker's Conduct

The whistleblower exception did not apply to the nurse's action. The radiology tech's being drunk on the job was clearly unprofessional and potentially dangerous to patient safety. However, the Court ruled that the whistleblower exception applies only to illegal or unprofessional conduct by the facility itself. It does not apply to wrongful behavior by an employee which is not endorsed by the facility.

Exception for Serious Imminent Threat To Public Health or Safety

Another exception allows disclosure of confidential patient health information to prevent or lessen a serious and imminent threat to the health or safety of the public.

However, although an intoxicated caregiver could conceivably represent such a threat, at the moment when the nurse spoke with the radiology tech's supervisor the facility was handling the whole situation in a way that prevented him from posing any threat to public health or safety.

An exception also exists for medical surveillance in the workplace, which did not apply and nevertheless requires prior written notice to the employee in question.

Nurse's Obligation To Support Patient Safety

The Court acknowledged in general terms that a nurse does have a professional duty as a nurse to take action when a coworker is drunk on the job and thereby poses a potential threat to patient safety.

However, according to the Court, once that coworker becomes the nurse's patient the rules of nurse/patient confidentiality become paramount and non-disclosure of the patient's confidential health information is mandated by the strict HIPAA requirements. **Guardo v. Univ. Hosp., 2015 WL 1774374 (Ohio App., April 20, 2015).**

Commode, Fall: Court Evaluates Negligence Allegations.

A nursing technician assisted a post-knee replacement surgery patient to the toilet in her hospital room which had a raised seat.

The patient reportedly cried out, "Whoa" as she sat down, due to the raised seat being wobbly and unstable. At this point the tech assured her it was all right. He left her alone for the sake of her privacy. When she leaned to the side to wipe herself, she fell off the seat as it collapsed and was injured.

If the nursing technician heard the patient cry out or was otherwise aware of the hazard posed by the raised toilet seat's instability, a jury would not need expert testimony to decide if he was negligent to take no further action and leave the patient alone on the seat.

COURT OF APPEALS OF MICHIGAN
March 17, 2015

The Court of Appeals of Michigan ruled the case could go forward based on allegations of ordinary, as opposed to professional negligence.

A jury of non-expert lay persons would not need expert testimony to decide whether it is negligent to let someone use a raised toilet seat that is wobbly and obviously unstable.

However, expert testimony as to nursing fall-risk assessment would be required to question whether the patient was able to use the commode without stand-by assistance and could be safely left alone to call for assistance when she was ready. The patient's lawyers had no such expert testimony to offer to the court. Nor did they follow the state's stringent pre-suit procedural requirements for a healthcare malpractice lawsuit. That part of the case had to be dismissed. **Sawicki v. Katzvinsky, 2015 WL 1214843 (Mich. App., March 17, 2015).**

Medication Reconciliation: Nurse's Error Not Cause Of Death.

The patient, only twenty-four years old, was on hospice care due to an uncorrected congenital heart defect that had plagued her with pulmonary hypertension.

She was admitted to the hospital for a palliative paracentesis procedure to drain fluid accumulation from her abdomen.

The medication reconciliation form completed by the admitting nurse indicated a twice-daily 2.5 mg Vasotec dose. In fact, the primary care physician had reduced the Vasotec dose to 1.25 mg twice daily.

She was given the 2.5 mg dose over a complicated hospital course and died.

The nurse acknowledged a major error in looking at five-month-old prior hospitalization records but not checking to see that the primary care physician had recently cut the Vasotec dosage in half, due to concerns over toxicity related to the patient's advancing renal failure.

COURT OF APPEALS OF KANSAS
April 3, 2015

The Court of Appeals of Kansas affirmed the jury's verdict that the admitting nurse and the patient's hospitalist physicians were not responsible for her death.

The admitting nurse's and the patient's mother's testimony were at odds over whether the mother brought in the patient's current pill bottles. The nurse testified she would have charted those current medications if the mother had done so.

The nurse acknowledged she relied on five-month-old hospitalization records for the Vasotec dosage and did not look for records or contact the primary care physician's office, which would have revealed the fact the dosage had been lowered. Nevertheless, the jury declined to find fault. **Dickerson v. St. Luke's, __ P. 3d __, 2015 WL 1510679 (Kan. App., April 3, 2015).**