

# LEGAL EAGLE EYE NEWSLETTER

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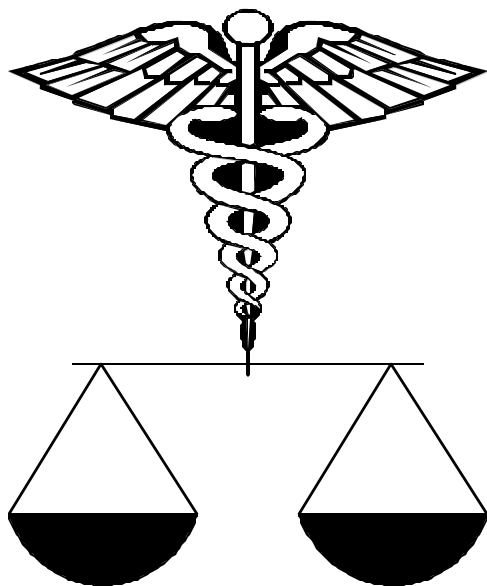
## Abandonment: Nurse Negligent To Take Break Before A Nurse Back On The Floor.

**T**he District Court of Appeal of Florida noted with care in its opinion in a recent case, that the events in question took place in a nursing home, not in a critical care facility. None of the thirty to forty patients on the floor were critically ill or suffered from any life-threatening conditions. None of the patients, according to the court, required constant monitoring by a professional nurse, as would be the case on an intensive care unit or in an acute care hospital.

The court ruled nevertheless that the nurse was negligent for leaving the floor to take her break without actually checking to make sure another licensed nurse had returned from break to duty on the floor.

It was not proper for the nurse to assume, because nurses were entitled to fifteen minute breaks, and because it had been twenty to twenty-five minutes since the other nurse had left for her break, that it was appropriate for her to leave the floor for her own break. The court also said it was not important that there were only forty-five minutes left in the shift in which to take the remaining fifteen-minute break to which she was entitled before her shift ended.

Even though this LPN was negligent for leaving the floor as she did,



***It is negligent for a nurse to assume that another nurse has returned to the floor, without actually checking before leaving to take a break.***

***However, this was a nursing home, not a critical care facility. The patients did not require constant monitoring. In this case grounds did not exist to fire the nurse.***

DISTRICT COURT OF APPEAL OF FLORIDA,  
1997.

there were mitigating circumstances which made her termination over this incident unjustified, the court ruled.

The incident took place in a nursing home, not in a critical care facility. The nursing home patients were not placed in jeopardy by the nurse's absence from the floor. The nurse did not go far from the floor. She only stepped outside on a patio and could see the nurses' station.

According to the court, under the specific circumstances of this case, the nurse could not be charged with deliberate violation or intentional disregard of standards of practice for a professional nurse, although strictly-speaking she had been negligent.

The court ruled implicitly, however, that leaving a nursing post in intensive care or acute care where the constant presence of a licensed nurse is required for the patients' well-being, assuming without checking to verify that another nurse has returned from a break, would be abandonment, that is, negligent and highly unprofessional misconduct justifying termination.

The nurse had previously been warned about other patient care issues, but the court felt this was irrelevant to deciding the specific issue in this case.

**Folden vs. Unemployment Appeals Commission, 696 So. 2d 537 (Fla. App., 1997).**

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