

## Attendance Problems: Court Says Nurse Can Be Fired For Failing To Call In.

A staff nurse working in the operating room had chronic health problems including tonsillitis, allergies and severe itching from a skin condition.

She also had chronic problems with getting to work on time which ultimately led to her termination.

The Court of Appeals of Minnesota, after reviewing her work history in detail, ruled that her termination was justified.

According to the Court, an employer is not justified in terminating an employee who has to miss work or come in late because of legitimate health issues that the employee can substantiate with medical documentation.

However, an employer is justified in having an attendance policy which requires employees who know they will have to miss work or come in late to notify the employer in a timely manner when it is necessary for that to occur. A healthcare employee routinely coming in fifteen minutes or a half hour late without notice is not something an employer need tolerate, the Court said. **Hadfield v. North Memorial**, 2013 WL 1943066 (Minn. App., May 13, 2013).

## Blood Draw: Nurse Committed Medical Battery, Liability Upheld.

*After the police failed to get a blood sample by force, bodily holding the patient down in the PACU, they had a nurse go into the room and try again.*

*The nurse went quietly into the room and drew the patient's blood.*

*Although she presented herself as the patient's medical provider, she actually drew the blood for the nonmedical purpose of providing a forensic sample to the police.*

*The nurse did not disclose to the patient her purpose in drawing the blood which was not associated with the patient's treatment.*

*The patient did not object to the nurse drawing his blood, but did not consent to her drawing his blood for a nonmedical purpose.*

*The nurse is not protected from a lawsuit for medical battery.*

SUPREME COURT OF VERMONT  
May 17, 2013

Police shot the suspect after he rammed their police cruiser as they tried to stop him for driving under the influence.

Right after emergency surgery at the hospital the police tried to get a blood sample in the post-anesthesia recovery unit, but they gave up after the patient resisted.

Then a nurse entered the room by herself and drew the blood with no objection or resistance from the patient.

The police had, in fact, asked the nurse to go in to try to draw the blood for them after their own efforts failed. The blood sample was to be used to establish the patient's blood alcohol level for probable cause to pull him over and to prove he was guilty of driving under the influence.

### Court Sees

#### Medical Battery By the Nurse

The Supreme Court of Vermont ruled that the patient had the right to sue the nurse and her employer for medical battery.

In general a healthcare provider is protected by statute from civil liability for drawing blood at the request of law enforcement for forensic purposes, but what happened here was not exactly what the statute contemplated, the Court said.

The nurse implicitly led the patient to believe she was acting as a medical provider while she really meant to draw his blood only for nonmedical purposes.

Under the circumstances the nurse failed to obtain consent for the intervention she performed, which fit the definition of medical battery for which the patient has the right to sue. **O'Brien v. Synnott**, \_\_\_ A. 3d \_\_\_, 2013 WL 2124161 (Vt., May 17, 2013).

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E. Kenneth Snyder, BSN, RN, JD  
Editor/Publisher  
PO Box 4592  
Seattle, WA 98194-0592  
Phone (206) 440-5860  
Fax (206) 440-5862  
kensnyder@nursinglaw.com  
www.nursinglaw.com

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