Hello, my name is Ken Snyder. I am an attorney and a registered nurse. For more than fourteen years I have been writing and publishing Legal Eagle Eye Newsletter for the Nursing Profession, in which I follow and highlight the latest legal developments affecting nurses and nursing practice.

The title of this program is Narcotics Diversion and Other Legal Issues with the Chemically Impaired Nurse. This program is one in a series dealing with legal issues in nursing practice. The overall goal of the series is to help nurses in clinical practice settings learn how to avoid legal liability. This program, however, is primarily geared to nursing supervisors and managers who make personnel or human resource decisions.

The big legal issues with addicted and alcoholic employees are disability discrimination, family and medical leave act protection for time taken to get treatment, wrongful termination and defamation. These are the issues that stand out if you do as I do and look at the actual cases coming out of the courts.

The US Americans With Disabilities Act, referred to as the ADA, and some state disability-discrimination laws define a successfully rehabilitated drug abuser as a disabled person who has certain rights in the workplace. The Americans With Disabilities Act and the Equal Employment Opportunity Commission regulations which apply to private-sector employers do not mention alcohol or alcoholism, just drugs, drug abuse and addiction. However, the courts have glossed over this point on the assumption Congress did not mean for the ADA to create any distinctions between drugs and alcohol dependence, addiction or alcoholism, or, for that matter, between legal use of legal prescription drugs, illegal uses of legal drugs, as in narcotics diversion by healthcare professionals, or illegal street drugs use.

The US Family and Medical Leave Act and comparable state laws give employees the right to unpaid time off for their own and family members’ serious health conditions. Supervisors and employees alike have to pay attention to all the complicated details in the regulations, but the basic bottom line is that Federal and state laws give employees the right to unpaid time off for chemical dependency treatment.

I want to stress the fundamentals in this short program so I have put the complicated Federal Family and Medical Leave Act regulations that apply to chemical dependency treatment on my website at www.nursinglaw.com/FMLA.pdf Federal regulations are not copyrighted so feel free to download, copy and redistribute them.

Defamation is the common-law legal term for the right to sue for damages in civil court over statements which damage or which would tend to damage a person’s reputation. Sometimes the terminology is not used in its strict legal sense, but strictly speaking libel involves a written statement and slander involves an oral statement. Libel and slander are grouped together under the general heading of defamation.

An employee who is wrongfully accused of illicit or illegal drug use, chemical de-
pendency, drug addiction, alcoholism, etc., may be able to sue for defamation and also for wrongful termination if fired over accusations that were not actually true or not carefully enough investigation to determine if they were true.

Let’s get back to disability discrimination and cover that topic in some detail as it applies to employees who suffer from chemical dependency.

If you want to cut right to the chase the starting point is to ask just what is a successfully rehabilitated drug or alcohol abuser who has legal rights under the anti-discrimination laws.

What does the law consider a successfully rehabilitated drug abuser? Remember, a person with a history of chemical dependency is only entitled to protection from disability discrimination once the person is successfully rehabilitated. To be candid, all of the case precedents I have read that try to deal with this point were cases where the employee in question had actually relapsed by the time the case got to the level of a court of appeals or state supreme court.

But that is not the point. Legally the point is, what was the status of the employee’s rehabilitation at the time of the disciplinary action, demotion, firing, failure to promote, etc., in question that affected the employee and brought on the lawsuit? At that point the employee may or may not appear to be successfully rehabilitated, and that is all that matters, not 20/20 hindsight whether the employee actually did stay clean and sober or actually did relapse.

Let’s jump right in and start looking at some key court cases. The most important recent case I have seen is from the US Federal District Court for the Western District of New York in September, 2005 Strong v. University of Rochester Strong Memorial Hospital 384 F. Supp. 2d 602. The court’s opinion contains a basic synopsis of all the relevant legal considerations I need to cover in this program.

THIS IS WHERE THE PREVIEW ENDS.