

## Medication Errors: Court Upholds Aide's Firing.

A home health aide worked in a group home for residents with traumatic brain injuries. Her job included administering medications to residents and documenting the medications in the medication administration record.

For medication errors the group home's policy was to counsel and warn an employee for the first four incidents and then to terminate the employee after a fifth.

The aide was terminated after her fifth medication error, having been counseled and warned after each of four previously.

***The facility's policy is for employees to document medications as the medications are administered.***

***The aide had been told and she knew what the policy was, yet she waited until the end of her shift to document her medications in the medication administration record.***

***The aide was guilty of misconduct and her termination was justified.***

COURT OF APPEALS OF MINNESOTA  
September 17, 2012

The Court of Appeals of Minnesota upheld her employer's right to terminate her for just cause.

Employment misconduct includes intentional, negligent or indifferent conduct that seriously violates the standards of behavior the employer has the right reasonably to expect from the employee.

The Court ruled that failing to document medications as they are administered, but instead waiting until the end of the shift, is misconduct for a care-giving employee, if the employee knows the employer's policy is contemporaneous documentation. The Court was not willing to accept being too busy as an excuse. ***Matoké v. Restart, Inc.***, 2012 WL 4052667 (Minn. App., September 17, 2012).

## Chemical Sensitivities: Court Turns Down Nurse's Disability Discrimination Lawsuit.

***The question is whether the nurse is a qualified individual with a disability, that is, whether she can perform the essential functions of her job with reasonable accommodation.***

***The evidence shows that due to her occupational asthma and multiple chemical sensitivities the nurse was having reactions to a wide range of chemicals used by her employer and to substances common in hospital environments.***

***While having a reaction or when treating such a reaction with medications the nurse was unable to concentrate, respond to an emergency, make clinical judgments or deliver patient care safely and effectively.***

***Often her reactions forced her to leave her workplace and not return for extended periods of time.***

***Accordingly, her condition rendered her unable to perform the essential functions of a staff nurse.***

***No reasonable accommodation was possible because her employer could not guarantee she would never come into proximity with the chemicals commonly used in its facility.***

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
September 7, 2012

A hospital staff nurse sued her former employer for disability discrimination related to her multiple chemical sensitivities.

The US Court of Appeals for the Eleventh Circuit (Georgia) dismissed the suit.

For the record the Court noted that the nurse was allergic to a wide range of chemicals used and substances commonly found in her workplace and in other institutional hospital environments. These included floor wax, floor sealant, floor stripper, cleaning products, chemical solvents, ammonia, rubbing alcohol, sprays, molds, dust, perfumes, scents, latex, volatile compounds and asbestos.

***Disability Discrimination Qualified Individual With a Disability***

To benefit from discrimination laws in the US an individual must be a qualified individual with a disability, one who, with or without reasonable accommodation, can perform the essential functions of the employment position the individual holds or desires to obtain.

Reasonable accommodation can include making existing facilities accessible and usable, job restructuring, acquiring or modifying equipment or modifying employment policies.

The employee has the responsibility to identify an accommodation and to prove that the accommodation is reasonable.

The employer is not required to create alternative opportunities for disabled individuals, reassign the employee to a position which is not vacant or to reallocate job duties or change the essential functions of the job.

The Court ruled the nurse was not qualified for her position because she could not function as a nurse while experiencing an allergic or asthmatic reaction.

Nor was there any reasonable accommodation her employer could make that would keep her out of proximity to any and all of the common substances her physician certified could and likely would provoke a reaction. Thus she could not sue for disability discrimination. ***Dickerson v. Secty. of Veterans Affairs***, 2012 WL 3892196 (11th Cir., September 7, 2012).