

## Confidentiality: Nurse Accessed Co-Worker's Medical Chart, Firing Upheld.

An RN was fired for snooping in the medical chart of a co-worker who was admitted to the hospital's E.R.

The nurse was not involved in the co-worker's care and had no legitimate medical reason to see the chart.

***The forty-four year-old nurse was fired and was replaced by a male nurse in his twenties.***

***However, the legitimate, non-discriminatory reason for her firing was improperly accessing a co-worker's medical chart.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
May 31, 2013

The nurse sued claiming that her firing was motivated by age discrimination. The US District Court for the Middle District of Pennsylvania dismissed her case.

A healthcare worker accessing any patient's chart without a medical reason is a violation of the patient's right to medical confidentiality guaranteed by the US Health Insurance Portability and Accountability Act (HIPAA), for which this hospital has a zero tolerance policy.

The computer system allowed the hospital to identify seven employees who were not involved in the patient's care whose log-ins were used to see this same chart. Three had plausible explanations for how someone else could have used their computers while they were logged in but momentarily away from their stations. Four others had no explanation and were fired.

The hospital also pointed out that the average age of nurses in its E.R. was forty-seven, which tended to negate system-wide discrimination against over-forty nurses. ***Cassidy v. Pocono Med. Ctr.***, 2013 WL 2403572 (M.D. Pa., May 31, 2013).

## Drug Abuse: Nurse Was Not Qualified Individual With A Disability.

An O.R. nurse was caught diverting fentanyl on the job. As an alternative to criminal prosecution he took a leave of absence for drug treatment.

During treatment for what his chart described as opioid abuse the nurse consistently denied being an addict but insisted he only used the fentanyl he stole and other narcotics just for fun.

While out on medical leave his position was filled, so after treatment the nurse applied for a job in another hospital's O.R. and briefly started the orientation process.

However, this prospective employer soon found out he did not disclose that he had a history of diversion and treatment or that his restricted license now prohibited him from access to narcotics and expressly forbade him from working in an O.R.

A nursing position was not offered to him and he sued his prospective new employer for disability discrimination.

***A recovering drug addict can be considered a disabled person. A former recreational drug user is not a disabled person.***

***Even if actually in successful recovery from a bona fide addiction, a nurse who is restricted from access to narcotics is not a qualified individual with a disability for a job that requires access to narcotics.***

UNITED STATES DISTRICT COURT  
CONNECTICUT  
May 31, 2013

The US District Court for the District of Connecticut dismissed the nurse's case.

Even if he was not a recreational user but was in fact a recovering addict, his restricted nursing license meant he was not a qualified individual with a disability for the O.R. job. ***Talmadge v. Stamford Hosp.***, 2013 WL 2405199 (D. Conn., May 31, 2013).

## Board Of Nursing: Reports To Board Are Protected By Legal Immunity.

A complicated series of events led to the death of an infant in the neonatal intensive care unit.

The staff nurse who cared for the patient was contacted by the unit's lead nurse practitioner and informed she was being suspended. Then she was fired.

Soon after that a physician from the hospital lodged a formal complaint with the state board of nursing over the nurse's conduct on the night in question.

The nurse sued for age and race discrimination relative to her firing and for defamation relative to the hospital's complaints to the board of nursing.

***A nursing professional who knows of an action or condition that might be grounds for disciplinary action is required to report to the board of nursing.***

***Individuals who report such matters have immunity from civil liability for defamation, provided they have acted without malice.***

UNITED STATES DISTRICT COURT  
MARYLAND  
May 30, 2013

The US District Court for the District of Maryland dismissed the nurse's case.

To sue her former employer for defamation the nurse had the burden of proof to prove that they acted maliciously in reporting her to the state board.

Malice in this context means actual knowledge that their communications to the board were false, coupled with an intention to harm her reputation. The nurse had no such evidence of malice.

The nurse's negligent conduct on the night in question was a legitimate, non-discriminatory reason, apart from age or race, for suspending and terminating her, the Court ruled. ***Walker v. Univ. of Maryland***, 2013 WL 2370442 (D. Md., May 30, 2013).