

## Whistleblower: Nurse's Rights Upheld.

A registered nurse was one of three nurses who reported in writing to the hospital's director of nursing that they had observed their supervisor falsifying patients' charts by documenting "made up" vital signs for patients who had already been discharged.

The nurse was never asked to participate herself in what she accused her supervisor of doing.

After reporting her supervisor the nurse was terminated after four and one-half years at the hospital. She sued her former employer for violation of her rights under the state's Whistleblower Act.

***The state's Whistleblower Act only protects employees who report employer misconduct to a government enforcement agency. However, the nurse still has the right to file a common-law retaliatory discharge lawsuit.***

UNITED STATES DISTRICT COURT  
ILLINOIS  
January 27, 2015

The US District Court for the Southern District of Illinois ruled the nurse had no rights under the state's Whistleblower Act.

By its express language the Act only protects employees who report employer misconduct to a government agency that has enforcement jurisdiction over the employer's illegal acts in question.

Nevertheless the Court went on to say that the nurse did have the right to file a common-law retaliatory discharge lawsuit.

It would wrong, the Court ruled, to allow an employer to terminate an employee for an action taken in furtherance of a recognized public policy. Protection of patients is a recognized public policy.

The nurse was acting in support of that recognized public policy when she complained, albeit only internally about what her supervisor was doing. Guminski v. Mas-sac Co. Hosp. Dist., 2015 WL 350669 (S.D. Ill., January 27, 2015).

## No Disability Discrimination: Nurse Unable To Perform CPR.

***An employee terminated on account of a disability has the right to sue for disability discrimination if he or she was nevertheless able to perform the essential functions of the job, either with or without reasonable accommodation.***

***This nurse's disability discrimination lawsuit fails because she cannot establish that she was able to perform an essential function of her job.***

***She could not pass her CPR certification, which her employer required of all care-giving employees annually, nor could she perform CPR.***

***Apart from the CPR certificate itself, it was an essential function of the nurse's direct-care position to be able to initiate appropriate preventive and rehabilitative nursing procedures, which could include performing CPR on her patient in an emergency.***

***The nurse would not have been physically capable of administering CPR to her infant patient in an emergency, on whatever surface might have been available, which was a job requirement separate and distinct from simply having a CPR certificate.***

UNITED STATES DISTRICT COURT  
CONNECTICUT  
January 22, 2015

The nurse had over forty years of nursing experience when she interviewed for a home-health position caring for children and infants with serious illnesses and disabilities.

Fourteen years earlier she had had double knee replacement surgery and afterward started using a cane to walk.

She was using her cane when she arrived for her job interview. She was told the position involved prolonged standing and walking, considerable reaching, stooping, bending, kneeling and crouching and required the ability to lift, position and transfer patients and to lift supplies and equipment.

She told the interviewer about her knee surgery. She was hired nevertheless for a nursing position providing in-home care on the 11:00 p.m. to 7:00 a.m. shift to a one year-old who had a trache tube for breathing and required tube feeding.

***All Care-Giving Employees Had To Pass Annual CPR Certification***

The company required all care-giving employees to obtain an updated CPR certification annually, which was usually done by attending an in-house training session.

The nurse was unable to kneel at the side of the CPR dummy to practice chest compression. At her request the infant dummy was placed on a conference table. American Heart Association guidelines only require the CPR dummy be placed on a hard surface, not necessarily on the floor.

Still she was not able to compress the infant dummy's chest sufficiently to obtain the clicking sound signifying proper depth of compression. The dummy was moved from the table to a desk, still to no avail.

The instructor, who had never failed a CPR student before, asked the nurse's supervisor and the HR director to come in to witness the fact she could not do CPR.

The nurse was terminated. She sued for disability discrimination.

***No Disability Discrimination***

The US District Court for the District of Connecticut upheld the nurse's termination over allegations of disability discrimination because she could not perform an essential function of her nursing position. Tupay v. Maxim, 2015 WL 328874 (D. Conn., January 22, 2015).