

Drug Testing: Hospital Violated Nurse's Rights, Court Says.

An RN hospital staff nurse was prescribed Tylenol #3 with codeine by his dentist after a tooth extraction.

During his scheduled shifts at the hospital days later he signed out and gave morphine to several patients.

The a.m. after he worked the night shift a nurse noticed a problem. A morphine bottle had more liquid in it than before the shift started, suggesting someone clumsily refilled it after drawing out the drug for self-administration.

Three days later the RN was phoned at home to come in on his day off for a required staff meeting. The "meeting" was actually a urine drug screening, to which he consented. He had taken a Tylenol #3 just before coming in but showed no outward signs of impairment.

Test results came back positive for morphine. The nurse was fired and was reported to the state board. He sued the hospital for violation of his rights.

Reasonable Expectation of Privacy

The US District Court for the Eastern District of Washington ruled against the nurse on the first prong of his lawsuit.

A healthcare employee who works for a facility with a policy allowing employee drug screening based on reasonable suspicion has no reasonable expectation of privacy as to drug testing.

That is true even when the actual testing demanded of the employee does not comport with the hospital's procedures.

There was reasonable suspicion of tampering at a time when he had access to narcotics. However, he was tested so long afterward it could not prove he self-administered at that time. Nevertheless, his right to privacy was not violated.

No Opportunity to Be Heard

The nurse did have the right to a fair hearing to explain the circumstances before the hospital reported to the state board that he was screened after suspected narcotics tampering and tested positive although no actual diversion could be proven.

He was entitled to an opportunity to explain that he had a legitimate prescription for codeine, which his expert would testify metabolizes to morphine. **King v. Garfield Co.**, ___ F. Supp. 2d ___, 2014 WL 1744179 (E.D. Wash., May 1, 2014).

The hospital has a legitimate interest in confirming whether or not an employee is using illegal drugs.

The facts supported a reasonable suspicion to test this RN for drugs.

He had recent access to a morphine vial that hospital officials suspected had been tampered with.

He documented that he administered morphine to one of his patients earlier the same morning before another nurse noticed the suspected tampering. He had done the narcotics count at shift change the evening before.

The RN worked for a facility that required a nurse to submit to a drug screen when there was reasonable suspicion.

Thus he had no reasonable expectation of privacy as to drug screening, even though he was not tested within twenty-four hours of the discrepancy being first noticed and he never showed outward signs of intoxication.

However, he had the right to a hearing before negative statements about him were reported to the state board. In the hearing he could have explained that he had a prescription for codeine.

UNITED STATES DISTRICT COURT
WASHINGTON
May 1, 2014

Patient Neglect: Nurse's Firing Upheld.

A patient in a state-operated psychiatric facility walked out of her room and collapsed in the hallway.

The charge nurse walked down the hallway and came across the patient lying face down, not moving and soaked in urine.

From a few feet away without any physical contact she observed the patient for perhaps a minute and then proceeded toward the nurses station to get someone to help her change the patient's clothes.

A few minutes later a nursing assistant checked on the patient and called for another nurse to assist her. When the patient did not respond, that nurse began CPR.

The patient died later that day from a pulmonary embolism. According to the court record, that outcome was inevitable and would not have been avoided if the charge nurse had taken immediate action.

Appropriateness of the nurse's termination is governed by the meaning of the word "neglect" as grounds for a nurse's termination under the collective bargaining agreement.

A separate court ruling setting aside her inclusion in the abuse registry is not the final answer.

COURT OF CHANCERY OF DELAWARE
April 30, 2014

The Court of Chancery of Delaware upheld the nurse's termination for just cause.

Patient neglect was listed as just cause for a nurse's termination under the collective bargaining agreement for nurses at the facility.

Neglect under the collective bargaining agreement did not necessarily have the same definition as it does in the state statute for health care providers, which allowed the arbitrator to turn down the nurse's grievance. **AFSCME v. State**, 2014 WL 1813279 (Del. Chancery, April 30, 2014).