

Employment Evaluation: Court Gives Supervisors Latitude, Dismisses Nurse's Slander Suit.

A staff nurse was fired based on a statement from her supervisor to the hospital's director of human resources that the nurse had been rude to a patient.

The nurse's employment record was satisfactory, even praiseworthy, in all other respects.

The supervisor and human resources director declined the nurse's request that the patient be contacted and brought in to verify whether or not he believed the nurse had been rude to him.

The nurse sued the hospital, her former supervisor and the director of human resources for slander. The lawsuit claimed the communication between her former supervisor and the human resources director was the sole reason for her termination.

The Court of Appeal of California, in an unpublished opinion, threw out the nurse's lawsuit.

Employment Evaluations Statements of Opinion

Employers Given Wide Latitude

To be valid, a lawsuit for slander must be based upon a false statement of fact that tends to injure a person's reputation in respect to the person's trade, business or occupation.

Slander involves an oral statement; libel is the corresponding term for a written statement.

By definition, a statement of opinion is not a statement of fact. The law simply does not allow lawsuits for slander to be based upon statements of opinion.

It would be irrelevant, the court said, to bring in the patient for his opinion about the nurse's attitude and conduct, to reach a decision in the nurse's slander lawsuit. Even if the patient's opinion was that the nurse was not rude to him, the nurse's superiors are still entitled to have their opinions, to share their opinions and to take action based on their opinions about subordinates without risking a lawsuit for slander. **Cummings v. Gunzer**, 2004 WL 51943 (Cal. App., January 13, 2004).

A lawsuit for slander has to be based upon a false statement of fact.

A lawsuit for slander cannot be based upon a statement of opinion.

In the context of employment evaluations the courts have thrown out slander lawsuits filed over supervisors' statements that a subordinate, "was not carrying his weight," "had a negative attitude in dealing with others," "lacked direction in his project activities," and "was unwilling to take responsibility for the projects he oversaw."

Statements of opinion are statements that cannot be proven one way or the other.

Whether a nurse acted rudely toward a patient cannot be proven one way or the other. It is a subjective judgment. One person may view a nurse's attitude and conduct one way while another sees it another way.

The patient's subjective perception is just one more person's opinion. It is not the controlling factor one way or the other.

Employers have wide latitude in this context.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
January 13, 2004

Emotional Distress: Nursing Home Resident Can Sue.

The Court of Appeals of Texas has ruled a nursing home resident can sue for intentional infliction of emotional distress if intentionally treated by a staff member in a manner that is extreme and outrageous and which results in severe mental distress.

Brusque handling in transfers from wheelchair to bed, taking away the call button and disconnecting it from the wall, moving a food tray out of reach and moving a table with the bed pan out of reach, when directed at an elderly disabled woman, fit the legal definition of extreme and outrageous conduct.

However, the court at the same time upheld the jury's determination that the aide's malicious conduct was outside the scope of his employment duties, making the nursing home not civilly liable for his actions. **Cortez v. HCCI-San Antonio, Inc.**, ___ S.W. 3d ___, 2004 WL 28354 (Tex. App., January 7, 2004).

Newsletter Now Available Online.

Our newsletter is available online to paying subscribers at no additional charge beyond the subscription price.

All subscribers receive print copies in the mail whether or not they also want the online edition.

If you are interested in the online edition, e mail us at info@nursinglaw.com. Identify yourself by name and postal address and include your e mail address. About ten days before the print copies go out in the mail the Internet link to the online edition is e mailed to you. You can open the link directly from your e mail and read the newsletter on your computer in Adobe Acrobat PDF file format.