"Whistleblowers:" No Retaliation Against Nurse For Filing Formal Report With State Nursing Board.

No employer is permitted to retaliate against a nurse who files a formal written report with a state licensing agency regarding a patient who has been exposed to a substantial risk of harm from substandard care. Many states have explicit statutes, regulations and/or case precedents which protect so-called "whistleblowers" from employer retaliation by allowing victims of retaliation to sue.

However, there is another side to the coin, as the Court of Appeals of Texas pointed out in a recent case. In this case, a home-bound patient had been visited by two home health nurses on the same day. Each nurse administered the same insulin dose to the patient, and the patient died.

Several nurse managers at the home health agency were already in considerable hot water with their employer over the incident before a verbal threat was voiced to report the incident to the state board of nursing. The threat apparently was a ploy to gain advantage in negotiations over whether the nurse managers would be reprimanded, demoted or fired. After the decision was made to demote them from their management positions, they sent a letter to the board outlining the facts of the underlying patient-care incident.

The court did not allow the nurse managers the right to sue as whistleblowers. A signed formal written report to the state board cannot be the basis for employer retaliation, but the mere threat to file such a report warrants no special protection under the law. In addition, the nurses had to prove they were demoted because of the signed report they ultimately sent to the board, which they could not do because their employer had already made its decision before they sent anything to the board. **Clark vs. Texas Home Health, Inc., 940 S.W. 2d 835 (Tex. App., 1997).**

Emergency Medical Treatment And Active Labor Act (EMTALA): Nurse's Assessment Was Adequate, Hospital Not Liable.

This patient came in with foot pain from a fall and abdominal pain. The nurse classified her as non-emergent. Two hours later a relative who phoned in reported she had had arm and chest pain. At this point she was given a cardiac screening and found to be having an acute infarct.

Without proof that the hospital failed to follow its own standard screening procedure for the patient's presenting complaints, the hospital is entitled to have a lawsuit filed against it under the EMTALA dismissed by the court.

A hospital satisfies the legal requirement of an appropriate screening examination if the hospital's standard screening procedures are applied uniformly to all patients presenting with the same medical circumstances.

The purpose of the EMTALA is to ensure that each patient who comes to the emergency department is accorded the same level of care as other patients, and to prohibit the "dumping" of unstabilized patients.

UNITED STATES DISTRICT COURT, KANSAS, 1997.

The patient was brought in by ambulance to the emergency room. Her vital signs were taken immediately upon arrival. The triage nurse, according to the court record, took a history from the patient of onset of pain in the right foot from falling that morning, the falls having been caused by weakness. The patient also reported pain in her lower left side. The patient was alert and coherent and fully able to give this information to the nurse.

The nurse classified the patient's condition as non-emergent. The patient was seen by the emergency room physician twenty-nine minutes after arrival. His history included the fact the patient was an insulin-dependent diabetic, and that she had been vomiting every morning for the past two weeks. He examined her abdomen for tenderness and masses, and ordered routine blood work which came back normal. He got on the phone to try to reach the patient's family physician.

Two hours after the patient arrived a relative phoned in. The relative reported the patient had had arm and chest pain and had blacked out. At this point she was placed on a cardiac monitor. The tracings indicated an acute infarct so she was sent to the intensive care unit, then transferred to another hospital where she died.

As far as the emergency room nurse's initial assessment, the U.S. District Court for the District of Kansas ruled there were no grounds for a lawsuit under the Emergency Medical Treatment and Active Labor Act (EMTALA). The nurse's assessment of the patient as non-emergent was proper, given the patient's presenting complaints, even though the patient's condition later proved more complicated. By taking vital signs and a history, assessing the patient and getting a physician to see the patient promptly, the nurse did what was expected of her. **Scott vs. Hutchinson Hospital, 959 F. Supp. 1351 (D. Kan., 1997).**