

## Epileptic Aide Laid Off: No Disability Discrimination.

**S**ince he suffered from a form of nocturnal epilepsy and had to take medication during the day which made him drowsy, an aide was permitted by his supervisors to combine his two fifteen minute breaks with his half-hour lunch, and to take a one hour break during the day to take his medication and then take a nap. Combining breaks was a violation of the hospital's written policies and procedures but was nevertheless tolerated for this employee and others.

However, the hospital brought in an outside consultant to assist in running the rehab department on a more efficient basis. The consultant began to enforce hospital policies and procedures to the letter, and immediately stopped the practice of allowing employees to combine work breaks. The aide protested this change vehemently, and obtained the right to continue combining his breaks, with supporting documentation from his physician.

At the same time, the hospital's financial condition was deteriorating. It became necessary to reduce staff hours, and to lay off a number of employees. The rehab aide saw his full-time position eliminated. He filed suit against the hospital alleging disability discrimination in violation of the Americans With Disabilities Act.

The United States Court of Appeals for the Third Circuit ruled in favor of the hospital. It was not convinced the aide had established that an illicit, discriminatory motive had played a part in the hospital's decision to eliminate his position. His dismissal, according to the court, resulted from a hospital-wide reduction in force because of financial difficulties, and not from any discriminatory motive.

The aide's epilepsy was not the sole cause, was not a determinative cause and played no role whatsoever in the hospital's decision to eliminate the aide's position and to lay him off, according to the court. **Newman vs. GHS Osteopathic, Inc., Parkview Hospital Division, 60 F. 3d 153 (3rd Cir., 1995).**

## Federal False Claims Act Applied To Employee's Complaints Over Employer's Medicare Billing Practices.

***The Federal False Claims Act, which has been in effect since 1863, empowers a private individual to bring a suit against persons who knowingly present false or fraudulent claims to the U.S. Government for approval or payment in violation of law.***

***In this case there were claims of overuse and misuse of spirometry tests and MRI's for Medicare patients.***

***In addition, after the responsible parties were confronted with these claims, the person who had uncovered them was discharged from her employment.***

***Termination of an employee who "blows the whistle" on an employer for false or fraudulent Medicare billing practices is, in and of itself, a violation of the law for which the employee can file a retaliatory discharge lawsuit.***

***The court needed to hear specific facts to support the employee's case, which she was able to supply. It would not allow the employee to go on a "fishing expedition" for potentially improper Medicare billings in the employer's records.***

UNITED STATES DISTRICT COURT,  
NEW YORK, 1995.

**A**llegations were made that spirometry tests were being performed incorrectly, performed with uncalibrated instruments, repeatedly administered to patients when unnecessary, and administered without subsequent interpretation of the test results.

Likewise, it was claimed that expensive MRI's were ordered to the exclusion of more diagnostically-useful and less expensive x-rays and CT scans, that MRI's were ordered when they simply were unnecessary, and that they were ordered to be performed upon parts of patients' bodies which had no relation to the diagnosis and treatment of their medical ailments.

There were further allegations of corporate interconnections between the referring physicians and the facilities which did the MRI's, and that two of the referring physicians in fact received substantial yearly "consulting fees" from the MRI facilities, in violation of Federal law and state Medicare regulations.

The United States District Court for the Southern District of New York, in its opinion in this case, ruled that the false claims and "whistle-blowing" provisions of the Federal False Claims Act apply to false or improper Medicare billings.

The court did not rule on the validity of the specific allegations of improper Medicare billing practices. At this stage in this litigation the task for the court was only to find that there was on file a sufficiently accurate and detailed affidavit of the events in question to permit trial to go forward on the allegations raised.

The court ruled that the employee had made out a *prima facie* case of false and/or fraudulent Medicare billing practices, and had not launched upon a "fishing expedition" to try to uncover potential discrepancies or errors in the defendants' records to justify her suit having been filed. **Mikes vs. Strauss, 889 F. Supp. 746 (S.D.N.Y., 1995).**