

Personal Finances: Nursing Home Patient's Rights Are Not Absolute, Court Says.

Our May, 1999 issue had a one-paragraph article noting that the Court of Appeals of Utah had upheld a nursing home's owner's right to fire the administrator for telling a resident that her VA check had arrived in the mail. See: *Alzheimer's: Interference With Family's Finances Is Grounds For Firing, Court Says*. Legal Eagle Eye Newsletter for the Nursing Profession (7)5 May, '99.

The Supreme Court of Utah recently ratified that ruling and offered an explanation for the rationale behind the decision.

The Facts of the Case

A long-term resident of a long-term care facility was to receive a \$720 check from the Veterans Administration. The manager responsible for handling residents' finances informed most everyone except the administrator not to tell the resident, fearing the resident would try to use the money to move out of the facility.

Instead, the plan was to inform the daughter-in-law who had been helping the resident with her finances for years, have the daughter-in-law take the check and deposit it into the resident's bank account and then have the daughter-in-law discuss with her the need for her to buy herself a new wheelchair with the money.

Proper Channels / Insubordination

When the administrator found out she went directly to the resident and told her her check had arrived and been deposited. Then she got into a heated confrontation with the daughter-in-law.

When the owner/CEO of the facility heard what happened he promptly changed the policy so that residents always were to be notified when funds arrived and were deposited into their accounts.

Nevertheless, the court ruled the administrator should have gone through proper channels. The court said undermining the manager's actions and becoming embroiled in a confrontation with a family member was insubordination. *Rackley v. Fairview Care Center, Inc.*, 23 P. 3d 1022 (Utah., 2001).

An employee of a health-care facility has the right to sue his or her employer for wrongful termination if the employee is fired in retaliation for going against a policy or practice of the employer that breaks the law or violates a clearly defined public policy.

This is true even if the employee has no employment contract or is not working under a union collective bargaining agreement.

The question is how clearly our social policies define a care facility resident's right to manage her own financial affairs.

Residents do have right to manage their own affairs and cannot be required to deposit personal funds with the facility.

But that does not necessarily mean a nursing home employee can jump right in and interfere with how the home and the family have been handling the resident's money.

There is also a strong public policy that employers have the right to discipline employees who interfere with the employer's legitimate right to conduct business.

SUPREME COURT OF UTAH, 2001.

Nurse Resigns Over Patient-Care Issues: Court Sees No Right To Sue

A staff nurse was concerned about a patient's death. The nurse told the charge nurse he believed blood should be ordered for the patient because his wound was bleeding. Then his blood pressure dropped critically low and the staff nurse and another nurse started CPR.

The cause of death was ruled a heart attack. The nurse went to the hospital administrator, the hospital attorney and the director of surgery insisting that action be taken against the charge nurse for lack of concern bordering on malpractice.

The nurse also insisted the family be notified the patient had died as a result of neglect.

The nurse was transferred off the unit, began to receive low performance appraisals, eventually resigned and then sued the hospital for constructive discharge, claiming he was wrongfully forced to quit.

An employee cannot be discharged as retaliation for refusing to participate in illegal acts or for reporting illegal action taken by the employer.

Nor can an employee be constructively discharged, that is, forced to resign, for such reasons.

SUPREME COURT OF MISSISSIPPI, 2001.

The Supreme Court of Mississippi ruled the lawsuit should be dismissed.

The court ruled it is not a nurse's place to insist on a negligence-free workplace or to insist that the facility refrain from concealing malpractice and then sue for retaliation if his superiors do not interpret events just the same as he sees them. *Young v. North Mississippi Medical Center*, 783 So. 2d 661 (Miss., 2001).