

## Chemically Impaired Nurse: Court Upholds Employer's Right To Demand Blood Test, Terminate Nurse For Refusal.

The North Dakota State Board of Nursing suspended a nurse's license for one year for on-the-job alcohol intoxication and for an alcohol-related criminal offense of misdemeanor domestic assault.

The Supreme Court of North Dakota upheld the State Board and thereby vindicated the nurse's employer who had fired her for refusing chemical screening.

### **Alcohol / Drug Test Refused Insubordination – Termination**

Two doctors and three nurses smelled alcohol on the nurse's breath. She slurred her speech, mispronounced patient's one-syllable first names, had problems with equilibrium and laughed inappropriately.

When confronted she became highly belligerent. She refused to give blood or urine samples in the E.R. even as the E.R. nurse explicitly told her that her refusal would mean automatic termination. Instead, the nurse phoned her attorney and got into a highly agitated conversation.

The court upheld the nurse's employer's strict policy. When there is reasonable suspicion a nurse is intoxicated or chemically impaired on the job and the nurse refuses a blood or urine screening, the nurse's refusal is automatically considered a positive drug test and an act of insubordination justifying termination.

The State Board of Nursing similarly can consider a nurse's refusal as positive proof of intoxication or impairment and take appropriate disciplinary action.

The court rejected the nurse's testimony she was so shocked at being asked to be tested that she did not know what to do as well as her claim she was using over-the-counter cough medication.

### **Criminal Conviction**

The court also noted that a simple misdemeanor offense is grounds for license suspension and termination for a nurse if it involves harm to a person. **Kraft v. State Board of Nursing**, 631 N.W. 2d 572 (N.D., 2001).

***A nurse who is intoxicated on the job poses a clear and present danger to patients.***

***When there are grounds to suspect a nurse of being intoxicated on the job, the nurse's supervisor can immediately send the nurse to the emergency room for blood or urine to be drawn for chemical screening.***

***The nurse, like any other patient, has the legal right to refuse to have blood or urine taken.***

***However, when there is reasonable suspicion of intoxication and the nurse refuses to be screened, there are legal grounds to terminate the nurse.***

***Going one step further, the Board of Nursing can suspend a nurse's license in this situation.***

***If the nurse appeals, the Board will have to hear from the nurses and physicians who observed signs of intoxication. The nurse or her attorney has the right to cross examine the witnesses. The Board will have to determine if there was reasonable suspicion.***

SUPREME COURT OF NORTH DAKOTA,  
2001.

## Chemically Impaired CNA: Court Upholds Employer's Blood Test Policy, Firing.

A certified nursing assistant smelled of alcohol first thing Monday morning when she came to work. She was told she would have to have a blood-alcohol test. She refused and was sent home.

The next day she was informed she had been terminated.

***The law recognizes that alcoholic employees suffer from a disease that can take away their power of choice regarding alcohol.***

***However, it is a conscious, deliberate and voluntary act when an employee refuses to submit to testing for evidence of alcohol consumption.***

***A healthcare employer can enforce a uniform policy requiring an employee to be tested when there is reasonable suspicion of intoxication on the job and can terminate an employee on the spot who refuses.***

NEW YORK SUPREME COURT,  
APPELLATE DIVISION, 2001.

The New York Supreme Court, Appellate Division, upheld her termination.

The law in New York gives alcoholic employees considerable leeway for misconduct that can be traced to the disease itself. Nevertheless, a healthcare employer can terminate an employee for deliberately refusing a blood or urine test for chemical intoxication. **In re Cremeens**, 728 N.Y.S.2d 847 (N.Y. App., 2001).