

Whistleblower: Jail Nurse Can Sue, Was Fired For Reporting Financial Mismanagement.

Inmates in the jail were required by law to complete a co-payment form for medical services and medications they received in jail. Inmates by law had to agree to being billed \$5 every time they saw a physician and \$1 for prescriptions.

A nurse worked for the private corporation with the contract to provide medical services on-site to jail inmates. She complained to her supervisor that the law was not being enforced, believing it was wrong for the taxpayers to be burdened with an unjustified expense just because no one wanted to bother with the paperwork.

She was fired for insubordination and sued her employer for retaliation under the state's whistleblower law.

The Supreme Court of New Jersey upheld her right to sue and made several important points.

The term supervisor is interpreted very broadly. That is, an employee does not necessarily have to report a violation if the employee is concerned about the employee's immediate supervisor. Employees are allowed to go outside the strict chain of command.

An immediate supervisor may be inclined to discount employees' concerns, or on the other hand may be sympathetic but not have the authority to do anything. The worst case, of course, is where the immediate supervisor is the one who is doing wrong. In that case the purpose of the whistleblower law would be completely subverted, the court said, and expecting employees to stick to the strict chain of command would be wrong.

An employee must raise a complaint in a reasonable manner, however. The court pointed to a case where someone repeatedly phoned the Governor at night at his residence as an example of unreasonable behavior that is not legally protected. The court did not draw a clear dividing line between reasonable and unreasonable behavior to guide future whistleblowers. **Fleming v. Correctional Healthcare Solutions, Inc.**, 751 A. 2d 1035 (N.J., 2000).

The whistleblower law says, among other things, that an employer cannot take retaliatory action against an employee who discloses or threatens to disclose to a supervisor a policy or practice of the employer the employee reasonably believes is in violation of a law or a rule or regulation promulgated pursuant to law.

SUPREME COURT OF NEW JERSEY,

Patient Falls Out Of Bed: Liability Suit Dismissed.

The patient stayed in the hospital more than a month for diagnostic testing for low-back pain.

She fell out of bed. It was not clear how it happened, but her physician ordered her restrained while in bed. Two weeks later the physician believed the restraints were no longer necessary and ordered them discontinued. Then she fell out of bed again. Again it was not clear how it happened.

The patient sued. The patient's expert witnesses insisted the very fact she fell out of bed meant her nurses did not adequately assess and monitor her. The hospital's response was that no one could point to any specific deviation by the nurses from the legal standard of care.

The jury sided with the nurses. The Supreme Court of Appeals of West Virginia let the jury's verdict stand. **Reynolds v. City Hospital, Inc.**, 529 S.E. 2d 341 (W. Va., 2000).

Natural Disaster, Emergency Evacuation: Nursing Home Can Still Require Nurses To Come To Work.

The Governor declared a state of emergency and ordered a county-wide mass evacuation due to widespread uncontrolled wildfires in the area.

A nurse who lived in the county refused to report to her job at a nursing home in the county for the three-day duration of the state of emergency.

She was fired and then sued the nursing home claiming illegal retaliatory discharge. The District Court of Appeal of Florida threw out the lawsuit.

The whistleblower law does not give a nurse the right to sue for retaliation after being fired for abandonment for not reporting to work even after the Governor ordered a county-wide evacuation because of widespread wildfires.

DISTRICT COURT OF APPEAL OF FLORIDA, 2000.

The court did agree state law ostensibly says the Governor's declaration of a state of emergency has the force and effect of law. The court also agreed with the general principle of the whistleblower law that an employee cannot be fired for resisting an employer's insistence the employee perform an act that violates the law.

However, the court ruled it was too far-fetched to interpret the whistleblower law to excuse a nurse from reporting for work, even in a state of emergency, or to prevent the nurse's employer from taking appropriate disciplinary action. **Gillyard v. Delta Health Group, Inc.**, 757 So. 2d 601 (Fla. App., 2000).