

Nurse Copied Patients' Charts: Firing Upheld.

A nurse employed in a physician's office began to feel her working relationship with her employer was deteriorating after he began assigning more clinical responsibilities to her and shifting administrative tasks to other employees.

The nurse resented being criticized in front of patients and other office staff and so she handed in a letter of resignation.

She did agree to delay actually leaving until a replacement could be hired and trained. During that interim she photocopied and took home materials from more than fifty patients' charts to bolster a possible legal case against her employer for unfair treatment. When her employer learned what she was doing he told her to stop it, but she continued nonetheless.

The nurse's employer explicitly told her she was not permitted to copy and remove patients' records, but she continued to do so secretly in defiance of her employer's instructions.

The nurse was guilty of misconduct which would justify her termination for cause.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
January 15, 2013

The Superior Court of New Jersey, Appellate Division, agreed with the nurse, at least in principle, that it is possible for an employer to make an employee's job so difficult through unjustified criticism that rises to the level of personal harassment that the employee would be justified in quitting. But that was not the issue here.

Copying Patients' Charts Is Employee Misconduct

The nurse's employer was justified in terminating her for misconduct for misappropriating patients' confidential medical information from their charts for her own private use in a potential legal dispute, the Court ruled. ***Baber v. Board of Review***, 2013 WL 149654 (N.J. Super., January 15, 2013).

Labor & Delivery: Patient's Expert Faults Nursing Care.

There were significant problems during the night with decelerations of the fetal heart rate showing up on the monitor strip.

An ultrasound biophysical profile was ordered by the obstetrician and done between 6:40 a.m. and 7:40 a.m. and a reassuring score of 8/8 was recorded in the chart.

There were two problems with that, according to the expert's report submitted by the parents in conjunction with the filing of their lawsuit.

First, the labor and delivery nurses should have realized that ordering an ultrasound biophysical profile was not the appropriate medical intervention, given the acute problems with non-reassuring decelerations they had been seeing.

The standard of care for the labor and delivery nurses was to initiate the hospital's chain of command to get another obstetrician to come in and see the patient and likely order an immediate cesarean.

Second, the biophysical profile results were erroneous, in that a low amniotic fluid index was a significant finding that was not reassuring as was charted by the nurses.

COURT OF APPEALS OF TEXAS
January 10, 2013

The mother, who was thirty-three weeks pregnant, was admitted to the hospital in the early evening with spontaneous contractions without ruptured membranes. She had had a routine prenatal visit earlier that same day where her cervix was found to be dilated 1 cm.

The first fetal monitor strips obtained in the hospital showed a reassuring fetal heart rate with good variability.

Soon afterward, however, there was a prolonged deceleration with short recovery followed by a second deceleration. The patient's obstetrician was notified and ordered IV hydration, O₂ by face mask, terbutaline and antibiotics.

Problems with decelerations on the monitor strips continued through the night. Two prolonged variable decelerations followed by a prolonged deceleration lasting three minutes were seen at 6:40 a.m.

An ultrasound biophysical profile was ordered and carried out sometime between 6:40 a.m. and 7:40 a.m.

The obstetrician ordered an emergency cesarean at 7:48 a.m. and the baby was delivered at 8:32 a.m. with very poor Apgar scores.

Court Unable to Fault Obstetrician

At this point the parents' lawsuit has named the obstetrician as the only defendant. The obstetrician petitioned for dismissal on the grounds the parents' expert's report points to negligence by the hospital's labor and delivery nurses but does not necessarily implicate her for malpractice.

The Court of Appeals of Texas agreed with the obstetrician, but at the same time extended the parents a good measure of leeway to amend their lawsuit before a final decision is rendered.

It was far from clear how adequately the hospital's labor and delivery nurses understood or reported to the obstetrician the seriousness of the problems they were seeing during the night with the decelerations showing up on the monitor strips.

The Court agreed with the parents' expert that ordering an ultrasound biophysical profile was not right, but it was not necessarily grounds to fault the obstetrician if she was not getting good data from the nurses. ***Ezekiel v. Shorts***, 2013 WL 119712 (Tex. App., January 10, 2013).