

Transfer To Wheelchair: Facility's Rules Not Followed, Court Finds Negligence.

The Court of Appeal of Louisiana threw out the jury's verdict in favor of the hospital and substituted its own judgment awarding \$20,000 in damages to the elderly patient.

The court ruled negligence by the rehab hospital's personnel caused a non-displaced tibial plateau fracture in the obese diabetic patient's one leg remaining after above-the-knee amputation of the other leg six weeks earlier.

Non-Slip Footwear Required By Hospital Rules

The rehab hospital had a list of safety rules to be followed during patient transfers.

One rule stated, "Make sure the patient has footwear that will not slip on the floor."

This patient was wearing ordinary cotton socks. Apparently her foot on her one leg slid sideways at the critical point in the transfer maneuver and the bone fractured.

Facility's Safety Rules Are Mandatory

The hospital's medical expert witnesses all agreed the transfer was done in an appropriate manner.

However, the court ruled the patient's experts, two occupational therapists, gave testimony that more correctly stated the legal standard of care.



A facility's safety rules are basic guidelines to be followed on every transfer.

The rules are designed to protect the patient as well as anyone assisting.

The patient should have been wearing non-slip footwear and an aide should have stood in front with her foot blocking the patient's foot from slipping.

COURT OF APPEAL OF LOUISIANA
April 7, 2004

Healthcare personnel do not have discretion to depart from their facility's own patient-safety rules. If the rules are not followed, and a patient is injured, failure to follow the rules is strong evidence of negligence.

Patient's Foot To Be Blocked During Transfer

Hospital safety rules for transfers also required a caregiver assisting in the transfer to block the patient's pivot foot with the caregiver's own foot to keep the patient's foot from slipping.

According to the patient's experts, this requirement was also not met.

The court ruled that caregivers likewise have no discretion here. If the facility's patient-safety rules have been ignored, the court does not independently assess the soundness of the caregiver's improvised transfer technique. Negligence is proven. The only issue left is how much to award as damages.

The patient was transferring back to her wheelchair after being weighed on a scale for sedentary patients, only because a company representative wanted to see if the scale worked. The court said she was hurt in a transfer that was basically unnecessary for her own care. **Young v. Bernice Community Rehab. Hosp., __ So. 2d __, 2004 736705 (La. App., April 7, 2004).**

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Peripherally Inserted Central Catheter: Nurse Accepted As Medical Expert, Nurse Who Put In Line Ruled Negligent.

A seventy-three year-old man was admitted through the E.R. with chest pains. He had a lengthy medical history of ischemic cardiomyopathy.

His physicians ordered a central venous line for antibiotics for a urinary tract infection. A peripherally inserted central catheter was inserted by a staff nurse.

The catheter improperly looped back into the subclavian artery rather than lodging in the superior vena cava. It was not discovered for twenty-two hours.

A few days later he died of an acute myocardial infarction. His probate estate sued the hospital for wrongful death.

Nurse as Medical Expert

The county circuit court judge dismissed the lawsuit believing the estate's lawyers failed to file a proper expert witness report as required by state law.

The District Court of Appeal of Florida reversed that decision and reinstated the case. A nurse with advanced-practice standing in critical care and cardiac care should have been allowed to testify that the line was inserted negligently and that it contributed to the patient's demise.

The legal rule has been it is the sole province of physicians to testify as to medical cause and effect.

Nursing Negligence / Central Line

The nursing expert faulted the staff nurse for not measuring the line so as to be able to know the exact length that had been inserted. That, the nursing expert said, would have made the nurse realize the line might not have seated in the superior vena cava and needed prompt medical follow-up.

The nursing expert also believed the line's presence in the subclavian artery explained a documented spell of tachycardia and would testify that that precipitated the fatal MI. **Apostolico v. Orlando Regional Health Care System, Inc.,** __ So. 2d __, 2004 WL 587660 (Fla. App., March 26, 2004).

As a general rule nurses are not accepted by the courts as expert witnesses in healthcare-related malpractice cases.

The law takes the position that only physicians have the ability to diagnose and treat human ailments. Nurses can observe, assess and evaluate patients. Nurses cannot diagnose patients or prescribe medical treatments and are limited to following treatments ordered by physicians.

However, when the specific issue is nursing negligence, nurses can testify as to the nursing standard of care. Expert medical testimony from a physician is generally still necessary to establish a cause-and-effect link between nursing negligence and the specific harm that befell the patient.

This case is different. The patient's estate's nursing expert has advanced-practice training and experience in critical care and cardiovascular services. She qualifies as a medical expert.

DISTRICT COURT OF APPEAL
OF FLORIDA
March 26, 2004

Patient Abuse: No Physical Injury Required For Criminal Charges.

Two aides were trying to seat an Alzheimer's patient in her geri chair. They got her to sit down, but she kept leaning forward, making it difficult to slide the tray into place.

One of the aides abruptly pushed the patient backward. She hit her head on the back of the chair and screamed.

The aide was reported to the police and was convicted of patient abuse.

Abuse is knowingly causing harm to a resident of a care facility by physical contact with the person.

Harm does not require tangible physical injury such as a bruise or cut.

Pain does not have to be shown by an outward physical manifestation, to constitute physical harm.

COURT OF APPEALS OF OHIO
March 31, 2004

The Court of Appeals of Ohio upheld her criminal conviction.

A cut, bruise or other mark may provide conclusive proof of abusive contact by a caregiver, but no outward evidence of injury is necessary to prove that abuse has occurred if other evidence is available.

The other aide testified what happened, that the patient was treated roughly and seemed to have suffered some pain. That was sufficient evidence.

The patient herself did not testify, according to the court record. There was no legal bar against her testifying, but an Alzheimer's patient's testimony would tend to be discounted in a situation requiring proof beyond a reasonable doubt. **State v. Lohr,** 2004 Ohio 1609, 2004 WL 626053 (Ohio App., March 31, 2004).

Acute Myelogenous Leukemia: Court Faults Nurse For Diagnosing Patient With The Flu.

A college student came to the campus outpatient health care clinic on a weekend with flu-like symptoms.

The clinic staffed the clinic during off-hours with a registered nurse who was instructed to conduct an initial assessment and to contact a designated on-call physician if the nurse believed a patient needed to be seen by a physician.

The student patient complained to the nurse of a dry cough, nausea, dizziness, upper abdominal discomfort, lower back pain and general malaise.

Without consulting the physician the nurse determined the patient had influenza and recommended she drink fluids, follow a bland diet, rest and take Tylenol.

The nurse offered her a bed in the clinic infirmary, but the patient declined. The nurse released her from the clinic to go back to her dormitory room.

The patient was advised to return to the clinic if her symptoms persisted or worsened.

The patient went to stay with her parents.

Fifteen days later her parents took her to a hospital, where she died of acute anemia triggered by acute myelogenous leukemia.

The nurse at the clinic deviated from the legal standard of care for registered nurses by diagnosing and formulating a treatment plan for the patient without seeking the assistance of a physician.

The physician associated with the clinic deviated from the legal standard of care for physicians by signing off on the nurse's medical judgments.

The patient's family claimed the clinic was negligent in staffing the clinic on weekend off-hours with a registered nurse who had instructions to contact an on-call physician if she believed a patient needed to be seen by a physician.

This is a common arrangement. There is no evidence of any fundamental negligence by the clinic itself, apart from the negligence of the nurse and physician.

APPEALS COURT OF MASSACHUSETTS
March 25, 2004

The jury reached a verdict against the clinic for \$2 million in damages for the parents for wrongful death.

The Appeals Court of Massachusetts threw out the verdict because the parents' attorneys' legal arguments were not sufficient to support a case against the clinic.

No Negligence By Clinic Registered Nurse Staffing

The court said there is nothing fundamentally negligent in staffing an outpatient clinic during off-hours with only a registered nurse who has standing orders to assess patients and contact an on-call physician if and when the nurse believes the patient must be seen by a physician.

No negligence is attributed to the clinic if the clinic staff on duty are not expected or allowed to practice beyond their competency or their professional licenses and have instructions to seek appropriate consultation and referrals.

Nursing / Medical Negligence

The patient's parents made the decision to leave the nurse and the physician out of their lawsuit, and to proceed in court only against the clinic.

The court believed it is was negligent under the circumstances for the clinic nurse to make medical judgments as to this patient's diagnosis and plan of care without consulting a physician.

It was also negligent for the clinic physician, the court said, to sign off on the nurse's medical conclusions without actually seeing and examining the patient. **Goldberg v. Northeastern University, 805 N.E. 2d 517, 2004 WL 575148 (Mass. App., March 25, 2004).**

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Alzheimer's Dementia: Nurse Assaulted By Patient Cannot Sue Patient For Injuries.

The patient was institutionalized involuntarily in the county hospital for senile dementia of the Alzheimer's type.

In the county hospital he had to be transferred from the long-term care unit to the geriatric psychiatric unit when he became agitated and assaultive toward staff. Then he was transferred to a unit just for Alzheimer's and other dementia patients.

Nurse Assaulted Ignored Hospital Policy

The nurse had over twenty years experience working with Alzheimer's patients.

Hospital protocol was for a nurse to retreat from the patient and call security when a dementia patient was violent, aggressive or resistant.

The nurse knew the patient was often agitated and combative and had tried to hit staff. When he opened a fire door and set off the alarm one nurse tried to redirect him, but then she had to back off and went to call security.

The nurse in question, however, went to him and extended her hand to try to redirect him to his room. He pushed her down and she broke her leg.

No Right To Sue Patient

The Supreme Court of New Jersey ruled the nurse had no right to sue the now-deceased patient's probate estate for damages for personal injury. Courts in other states have ruled that a professional caregiver who is employed specifically to work with Alzheimer's patients has no right to sue a patient who assaults the caregiver.

The sole legal remedy is worker's compensation for an on-the-job injury.

A propensity to strike out at caregivers is one of the reasons Alzheimer's patients require professional care in special settings, the courts have said. Alzheimer's patients lack the mental capacity to understand the nature and consequences of their actions, a fundamental prerequisite to civil liability for negligence under our legal system. **Barberian v. Lynn**, __ A. 2d __, 2004 WL 726176 (N.J., April 6, 2004).

A professional caregiver chooses his or her profession and willingly accepts the risks engendered by patients' poor mental health.

Just as a firefighter is obligated to face the hazards of a burning building that belongs to someone else, a professional caregiver is obligated to face the hazards of patients' uncontrollable conduct.

A professional caregiver cannot file a lawsuit over the conduct of a patient when the conduct is, in whole or in part, the very reason for the caregiver's role with the patient.

Professional caregivers accept that their compensation for any injuries caused by mentally-disabled patients' aggression will be limited to the benefits available through workers' compensation.

The burden of having to compensate health care workers injured by disturbed patients shifts to their employers through the patients' contracts with the employers for their care.

The burden is removed from disabled patients of being parties to litigation.

SUPREME COURT OF NEW JERSEY
April 6, 2004

Alzheimer's: Patient Has The Right To Protection From Others.

A resident with Alzheimer's was placed in the nursing home by the family with assurances that the facility offered special care and had special security features to meet the needs of Alzheimer's patients.

A non-Alzheimer's patient known to the nursing staff to be physically aggressive gained access to the Alzheimer's unit and assaulted the patient.

The door to the Alzheimer's unit could only be opened in or out without setting off an alarm by punching a code into the key pad by the door.

The code was posted right above the keypad, on the assumption that the Alzheimer's patients could not figure it out.

An aggressive, assault-prone non-Alzheimer's patient entered and assaulted an Alzheimer's resident.

COURT OF APPEAL OF CALIFORNIA
March 25, 2004

The Court of Appeal of California found grounds for a negligence lawsuit against the nursing home.

A secure environment for Alzheimer's patients not only includes special precautions to keep them from being able to elope or to assault others, but also includes special precautions to keep these vulnerable individuals from being the victims of assaults by other residents with known tendencies toward aggression, the court ruled. **Intrieri v. Superior Court**, 2004 WL 586030 (Cal. App., March 25, 2004).

Decubitus Ulcer, Amputation, Death: Court Says Federal Regulations Are The Standard Of Care For Civil Court Malpractice Cases.

An elderly man resided in the nursing home for five years before being hospitalized following a stroke which left him partially paralyzed and unable to swallow.

In the hospital he developed leg contractures and a pressure sore on one heel. After he went back to the nursing home the pressure sore worsened significantly and the leg had to be amputated.

He died several weeks later. The family sued the nursing home for wrongful death and obtained a \$250,000 verdict.

The Court of Appeals of Arkansas, in an unpublished opinion, approved the verdict, based on *verbatim* use of the following excerpts from the Code of Federal Regulation (C.F.R.) pertaining to long-term care as jury instructions on the legal standard of care for a civil lawsuit:

Quality of Life

The facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality. 42 C.F.R. § 483.15(a);

Quality of Environmental

The facility must provide a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible; housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior; and clean bed and bath linens that are in good condition. 42 C.F.R. § 483.15(h)(1)(2)(3);

Care Plan

The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe

Violation of Federal regulations may be considered by a civil jury as evidence of negligence. The same is true of state statutes and regulations.

Administrative regulations may be regarded as the legal standard of care.

It is for the jury to decide if there is evidence the regulations were violated.

COURT OF APPEALS OF ARKANSAS
UNPUBLISHED OPINION
March 24, 2004

the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental and psychosocial well-being as required under § 483.25. 42 C.F.R. § 483.20(k)(1)(i);

Quality of Care – General

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. 42 C.F.R. § 483.25;

Necessary Services

Based on the comprehensive assessment of a resident, the facility must ensure that a resident is given the appropriate treatment and services to maintain or improve his or her abilities specified above. 42 C.F.R. § 483.25(a);

Assistance With Activities of Daily Living

Based on the comprehensive assessment of a resident, the facility must ensure that a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. 42 C.F.R. § 483.25(a)(1)(2)(3);

Pressure Sores

Based on the comprehensive assessment of a resident, the facility must ensure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing. 42 C.F.R. § 483.25(c)(1)(2);

Nutritional Status

Based on a resident's comprehensive assessment, the facility must ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible. 42 C.F.R. § 483.25(i)(1);

Fluid Intake

The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health. 42 C.F.R. § 483.25;

Adequate Nursing Staffing

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. 42 C.F.R. § 483.30(f);

Competency of Nurses Aides

The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for the resident's needs, such as identified through resident's assessments, and described in the plan of care. 42 C.F.R. § 483.75(f);

Clinical Records

The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are complete and accurately documented. 42 C.F.R. § 483.75(1)(1)(i)(ii); ***Rose Care, Inc. v. Coulter*, 2004 WL 576226 (Ark. App., March 24, 2004).**

Medicare: Hospital Swing Beds Are Not Eligible For Disproportionate Share Adjustment, Court Says.

The US Circuit Court of Appeals for the Fourth Circuit has reversed a lower Federal-court decision which was in favor of a rural North Carolina hospital.

The hospital has fewer than one-hundred total beds and all of its beds are licensed as swing beds that can be used for acute care or skilled nursing care as needed.

The lower court's decision would have granted the hospital \$615,000 in Medicare disproportionate-share reimbursement for patient-care days of patients occupying hospital swing beds over the period 1991-1997.

The Court of Appeals accepted the interpretation of the Medicare reimbursement regulations (42 C.F.R. 412.106) that was advocated by the US Department of Health and Human Services.

The Department argued that disproportionate share reimbursement is not meant to apply to all patient-care days in the acute-care areas of the hospital, but only to patient-care days in the acute-care areas of the hospital devoted to acute-care patients and not to skilled-nursing patients in so-called swing beds.

The Court of Appeals made note that swing beds, as skilled nursing beds, continue to come under the old reasonable cost basis for reimbursement rather than the Medicare prospective payment system, the former reasonable cost basis being generally more financially desirable for hospitals than prospective payment.

Presumably the hospital took that into consideration before going forward with its arguments in favor of its disproportionate-share reimbursement calculations.

The Court expressly said the regulations are ambiguous, which will probably draw attention to this case from the Congress and/or the US Supreme Court. **Dis-trict Memorial Hosp. v. Thompson**, ___ F.3d ___, 2004 WL 765032 (4th Cir., April 12, 2004).

A swing bed is a hospital bed physically located in an acute-care area of the hospital which has been licensed to be used either as an acute-care bed or as a skilled-nursing bed, depending on the acuity level of the particular patient occupying the bed.

The rationale is that some hospitals lack the resources to create physically separate floors or wings dedicated only to skilled nursing care as opposed to acute care.

The disproportionate share adjustment is extra compensation enacted by Congress in 1983 to compensate Medicare-participating hospitals who treat a disproportionate share of low-income Medicare patients who are believed to require more intensive services.

However, swing-bed patient days to not count toward reckoning the number of patient days to establish eligibility or to calculate the amount of the disproportionate share adjustment.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
April 12, 2004

Defamation, Wrongful Termination: Awards Upheld For Nurses.

The Supreme Court of Arkansas has upheld substantial jury verdicts for two nurses who were wrongfully accused of misconduct and fired based on complaints from aides, as retaliation because the nurses were in the process of reporting the facility to the state office of long term care for multiple uncorrected violations of state regulations. (*Defamation / Wrongful Discharge: Verdict Awarded To Nurses Wrongfully Accused*. Legal Eagle Eye Newsletter for the Nursing Profession, (11) 7, July '03, p.5.)

An employer is strictly forbidden from retaliating against a caregiver who is fulfilling the caregiver's strict legal and ethical duty to report abuse or neglect to proper authorities, and the caregiver can sue for compensation. **Northport Health Services, Inc. v. Owens**, ___ S.W. 3d ___, 2004 WL 743812 (Ark., April 8, 2004).

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Stress, Depression: Nurse Does Not Have Occupational Disease, Court Rules.

A nurse's depression or other mental or emotional problem from on-the-job stress may or may not qualify as an occupational disease for which worker's compensation benefits are available.

The key element is what it is about the nurse's job that causes the stress, according to a recent case from the Court of Appeals of North Carolina.

Generic Employment Issues

Stress Not Characteristic Of And Peculiar To a Specific Occupation

The court looked at testimony from the patient's treating psychiatrist to pin down the actual sources of the stress she was experiencing. The psychiatrist noted several factors:

1. A demanding workload.
2. The lack of a support system at her employment.
3. Staffing decisions she considered unfair or discriminatory.
4. A perception she was undervalued.
5. Management restructuring and changes in hospital policies.
6. Changes in work shifts contributing to insomnia.
7. Anxiety over job security.

The court ruled none of these factors, although genuinely stressful, is characteristic or peculiar to nursing. All are stress factors common to many workplaces. Even if the employee's condition is truly genuine and actually disabling, stress from generic work stressors by definition cannot cause an occupational disease.

By contrast, the court pointed out that a legal case precedent has been established that a nurse suffering from stress from having to deal with suicidal and homicidal patients in the particularly chaotic environment of a psychiatric facility can develop a true occupational disease. (*PTSD: Court Upholds Work Comp Award For Psych Nurse Disabled By Migraines*. Legal Eagle Eye Newsletter for the Nursing Profession (11)10 Oct., '03 p.1.) Lewis v. Duke University, __ S.E. 2d __, 2004 WL 727034 (N.C. App., April 6, 2004).

Workers compensation is paid for occupational diseases just like on-the-job injuries, but only if the worker's condition meets the strict legal definition of an occupational disease.

An occupational disease is a condition that is characteristic of and peculiar to the specific occupation.

A condition found in the population in general or in workers in general is not an occupational disease.

An occupational disease can be a physical or a mental condition.

For a mental condition to qualify as an occupational disease it must be characteristic of and peculiar to a specific occupation.

A nurse who is exposed to special stresses like dealing with suicidal or homicidal patients in a psychiatric hospital, who develops post-traumatic stress disorder, has an occupational disease.

A nurse who has stress from problematic dealings with supervisors and co-workers does not have an occupational disease. That can happen in any job.

COURT OF APPEALS OF
NORTH CAROLINA
April 6, 2004

Blow-By Oxygen: Nurse Faulted For Neonate's Death.

In a very complicated wrongful death case the Court of Appeals of Arizona placed the blame squarely on the nurse and exonerated the physician from blame.

The baby was born slightly premature and was diagnosed with respiratory distress soon after delivery. The physician decided the best way to administer supplemental oxygen was to put in an endotracheal tube and then have a pure oxygen source placed near the tube so that the baby's own respiratory effort would draw in pure oxygen, pending a decision whether to put the baby on a respirator.

There is nothing inherently hazardous in administering blow-by oxygen to a newborn suffering from respiratory distress.

A physician when ordering blow-by oxygen is not expected to anticipate that other personnel will allow the oxygen source to flow directly into the newborn's endotracheal tube, hyperinflating the lungs.

COURT OF APPEALS OF ARIZONA
April 1, 2004

However, the nurse allowed the oxygen source and the endotracheal tube to come in contact, forcing gas into the lungs with no avenue of escape.

Hyperinflation of the lungs was ruled the cause of death. The hospital as the nurse's employer settled with the parents. The jury ruled the physician was not negligent. Barrett v. Harris, 86 P. 3d 954, 2004 WL 635663 (Ariz. App., April 1, 2004).

Marital Property Settlement: Court Values Nursing License At \$32K.

Because the husband and the wife were not able to agree amicably to a property settlement in connection with their divorce, the matter had to be decided in court.

The New York Supreme Court, Appellate Division, pointed out that marital property includes intangible as well as tangible assets whose fair value must be computed.

The husband's civil service pension was an asset of the marriage. The wife's nursing license likewise was a marital asset, the court ruled.

She interrupted her schooling while the children were young, then went back to school leaving him as the sole support of the family.

All things considered, in the property decree the court put a value of \$32,000 on the wife's nursing license. Milteer v. Milteer, 2004 N.Y. Slip Op. 02556, 2004 WL 736977 (N.Y. App., April 5, 2004).

Reasonable Accommodation: Court Says Employee Cannot Pick Supervisor.

A nurse was promoted to unit manager supervising seventy-eight subordinates. Trouble with her own supervisor, however, took her off the job with clinical depression her psychiatrist related to her job.

The Court of Appeal of California, in an unpublished opinion, ruled she was not entitled to return to her same position with the hospital required to appoint a different supervisor.

Reasonable accommodation does not necessarily mean giving a disabled employee whatever the employee asks for, if it will impose an undue hardship on the employer. The hospital was paying for vocational rehab and had offered her other less stressful positions. Ceazan v. Saint John's Hosp. & Health Ctr., 2004 WL 788201 (Cal. App., April 13, 2004).

Misconduct: Supervisor Tolerated Violations, Court Finds No Justification For Termination.

A registered nurse temporarily lost her childcare for two weeks and had to leave work to pick up her child.

The nurse spoke with her charge nurse. The charge nurse told her she would have to combine her lunch break and her two other daily paid breaks and use that time to go pick up her child.

The charge nurse told her she would also have to make arrangements with other staff nurses to cover her patients while she was absent from the floor picking up her child.

The charge nurse also expressly told her she did not have to clock out while she left to pick up her child, notwithstanding the facility's strict policy set forth in the employee handbook requiring all employees to clock out any time they left the premises.

Misconduct justifying termination is willful or wanton disregard of the employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of an employee.

Repeated violations of explicit policies, after several warnings, are usually required before an employee can be terminated.

DISTRICT COURT OF APPEAL
OF FLORIDA
March 26, 2004

This went on for four days, until a supervisor just back from vacation noticed the nurse was absent and had not clocked out and started the process of having her terminated.

The District Court of Appeal of Florida ruled under the circumstances there was no legal justification to terminate the nurse for cause.

Normally a repeated, deliberate, intentional violation of an employer's express policy of which the employee has been made aware is grounds for termination for cause. However, the court said, when a violation of policy is expressly tolerated by a supervisor the employer cannot abruptly turn around and fire an employee without notice. Cooksey-James v. Unemployment Appeals Comm., __ So. 2d __, 2004 WL 590389 (Fla. App., March 26, 2004).