

Breach Of Medical Confidentiality: Nurse's Firing Upheld Over Removal Of Document.

A nurse who had worked in the hospital's surgery department for more than ten years was caught up in an episode where a coworker logged on to the computer to read another coworker's confidential medical records.

After being interviewed she was cautioned to drop the matter and not concern herself with it further. Nevertheless the nurse's supervisor learned months later the nurse was still asking around about it. The nurse received a written reprimand for failing to drop the matter as she was told.

At that time her work schedule was changed so that she no longer got two consecutive days off every week.

So one day the nurse took home the printout for the day's surgery schedule. The schedule listed patients' names and indicated the surgery each was having.

The nurse's plan was to bring the printout to a sit-down with her supervisor. She wanted to show she was being scheduled too often back-to-back with surgeons who were difficult to work with, was being scheduled to work with another nurse who lacked the experience to be an effective coworker, was not getting the breaks she needed between cases and was not getting the days off she needed to be fully rested to be able to function safely and effectively.

To protect patient privacy the printout of the surgery schedule was supposed to be shredded at the end of the day.

Instead, the nurse took it home with her and brought it back days later to use in complaining to her supervisor about her nursing assignments.

The nurse tried to argue in her defense that the state's human rights law protects her for taking the surgery schedule to use in validating her complaints about her employer's practices that she insisted could compromise patient safety.

The hospital argued she violated patient confidentiality and thereby exposed the hospital to potential liability and there was no excuse for lying about having taken the schedule out of the hospital.

SUPREME COURT OF MONTANA
February 7, 2019

When the unit managers tried to find out why the schedule had not been shredded as it should have been, the nurse lied to her supervisor, then told the truth days later in their sit-down.

Court Upholds Nurse's Firing

The Supreme Court of Montana ruled that violation of patient confidentiality is grounds for a nurse's firing.

Even if an employee believes that a document that contains a patient's confidential medical information is relevant to a legitimate complaint with the employee's employer, the employee is not justified in copying or removing it.

The Court acknowledged that the nurse's complaints may have been valid. The burdens the schedule imposed on her may actually have compromised her ability to function and thereby may have compromised safe and effective patient care. Even so, there was no justification for walking off with a document that contained confidential patient information.

The Court went on to say that lying about having taken the schedule home was an even more serious offense than the act of taking it itself. Her lie hindered the hospital's legitimate effort to determine why the schedule was not shredded and what really happened to it.

The nurse had been made aware of the hospital's policies to protect confidential patient information and was aware that breach of those policies could result in termination. ***Bollinger v. Clinic***, __ P. 3d __, 2019 WL 549075 (Mont., February 7, 2019).

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E. Kenneth Snyder, BSN, JD
Editor/Publisher

PO Box 4592
Seattle, WA 98194-0592
(206) 718-0861

kensnyder@nursinglaw.com
www.nursinglaw.com

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