

## Misconduct: Aide Stole Patient's Funds.

The New York Supreme Court, Appellate Division, ruled that a nursing assistant was not entitled to unemployment benefits following her termination from a nursing home.

That is, the assistant was fired for employee misconduct which justified her former employer in terminating her.

It was discovered the nursing assistant had withdrawn \$70 from a resident's bank account, supposedly to purchase items the resident had requested she purchase for her.

The assistant was given twenty-four hours to produce the purchase receipts. With full knowledge she would lose her job if she failed the assistant did not produce any proof whatsoever the funds went to a legitimate purpose.

Neither her employer or the state department of labor referee were required to consider the excuse which she offered, that the receipts were in her vehicle which she had loaned to another individual. Her termination was upheld. **Claim of Keeler**, \_\_ N.Y.S.2d \_\_, 2004 WL 3154911 (February 3, 2005).

## No Misconduct: Aide Questioned Nurse's Decision.

A certified nursing assistant was fired from her job in a hospice after she questioned a nurse's decision not to administer medication (Xanax) to an anxious patient who was asking for her medication.

One week later, on returning from vacation, the director of nursing heard there was a rumor circulating that the aide had seen the nurse allow her patient to die in agony without her medication. The aide was promptly fired as the person responsible for starting the rumor.

The District Court of Appeal of Florida overruled the unemployment department's denial of benefits to the aide. That is, the court found the aide was not guilty of misconduct that would justify termination. According to the court, a caregiver has an ethical duty and a legal right to speak up about patient care the caregiver legitimately believes is substandard. The court said the aide's concern was commendable. **Smith v. Unemployment Appeals Comm'n**, \_\_ So. 2d \_\_, 2005 WL 229870 (Fla. App., February 2, 2005).

## Workers Comp: Court Allows Payment For Nursing Services Provided By Family Member.

After her husband sustained a catastrophic spinal-cord injury on the job that left him basically a quadriplegic, the wife, a certified nursing assistant, applied for hourly compensation from her husband's workers compensation insurer for the services she was providing in the home.

The Court of Appeals of Iowa took note that she was an experienced certified nursing assistant. The services she provided included helping him transfer from bed to chair, dressing him, putting on his anti-embolism hose, assisting him with his utensil strap, assisting him with feeding and checking him for choking, assisting with dental care, dressing his catheter, tending to a bowel regimen, turning and repositioning him, bathing him, etc.

***The workers compensation law provides for payment of necessary in-home nursing services for an injured worker.***

***The worker's wife is a certified nursing assistant.***

***The services she performs in the home go beyond ordinary housekeeping tasks.***

***She should be compensated at the reasonable and customary rate for these professional services.***

COURT OF APPEALS OF IOWA  
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The court ruled these are professional services which come under the definition of nursing services due to injured workers under the state workers compensation law. In the local area the fair value of in-home CNA services is \$18.00 per hour, the court ruled.

It is not relevant whether professional services come from a family member or an outside home-health agency as long the services are prescribed by a physician, the caregiver is trained and certified and the services are competently performed.

The court differentiated ordinary household tasks like cooking, cleaning and laundry, which are not paid by workers comp whether provided by a family member or an outside party. **BTDR Dunlop v. Cline**, 2005 WL 157749 (Iowa App., January 26, 2005).