Nurse's Aide's Failure To Turn Patients: Firing For Willful Misconduct Upheld By Court.

This case was a claim for unemployment benefits. A nurse's aide claimed she was eligible for such benefits, as she was not terminated from her employment for "just cause" as defined by law. The state Unemployment Compensation Board agreed with the aide and granted her unemployment benefits. However, the employer, a nursing home, appealed to the court.

The Pennsylvania Commonwealth Court reversed the Board's decision and denied the claim for unemployment, the reason being that the nursing home was justified in terminating this aide for good cause for failing to follow the employer's established, written practices for mandatory turning of patients by aides on all shifts.

"Willful misconduct" in the employment context, which justifies termination for good cause, is defined as:

"The wanton and willful disregard of the employer's interest, the deliberate violation of rules, the disregard of standards of behavior which an employer can rightfully expect from employees, or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employer's duties and obligations."

Violation of the employer's established policy can constitute willful misconduct.

PENNSYLVANIA COMMONWEALTH COURT, 1995.

The aide testified she "always took care of her patients" even if she did not always complete her rounds to turn her patients, due to other job duties. She claimed, but the court would not accept, that her failure to turn her patients was often caused by problems of understaffing at the nursing home.

The court drew upon prior case precedents. It is established law that failure by a health care worker to perform prescribed treatment or to mark charts correctly, which are vital components of the worker's obligation to his or her employer and patients, are sufficiently serious offenses to constitute willful misconduct.

The court acknowledged that the aide may have believed it was acceptable not to reposition her patients. However, the aide's signature was produced in court upon a document describing her job duties which specifically included the requirement that a nursing assistant report progress with her assignments to the charge nurse. If there is some reason why she felt she could not follow establish policy regarding her duty to turn patients, she was required to communicate that to the charge nurse for appropriate direction, rather than assuming she could, at her own discretion, ignore the written requirement that she turn patients according to her employer's policies.

The court noted that in court the employer must be prepared, as this employer was, to prove the existence of any employer policy that is being questioned, and that it was communicated to the employee involved in the suit, before the acts in question. It is also necessary to have witnesses to the acts or omissions to which the employee is accused. **Gwynedd Square Center vs. Unemployment Compensation Board of Review, 656 A. 2d 562 (Pa. Cmwlth., 1995).**

L & D: Nurse Giving, Charting Narcotic Complied With Standard Of Care.

There was a physician's order in the patient's labor-and-delivery chart for p.r.n. Demerol for pain. According to the ruling of the Appellate Court of Illinois, a p.r.n. order amounts to a delegation of authority by the physician to the nurse to administer the drug when the nurse deems it necessary. The nurse may administer a p.r.n. medication without first consulting with the physician.

In this case, the court accepted the testimony of two expert witnesses, physicians who testified that the labor-and-delivery nurse had complied with the standard of care. She followed the physician's orders and accepted nursing practice, by administering the drug, a premeasured, single 25mg syringe, given IV over the course of one minute, because the patient complained of extreme pain and was not making progress in her delivery. The order was for only one p.r.n. dose, without re-contacting the physician. The nurse gave only one dose.

The nurse then properly charted that the drug had been given, and the time, dose, route and reason for giving it.

The baby was born with low Apgar scores, allegedly due to respiratory distress brought on by the Demerol given to the mother by the labor-and-delivery nurse, and suffered brain damage. The nurse was criticized in the suit for an alleged failure to communicate to the staff of the neonatal nursery that she had given the mother IV Demerol during labor.

The court ruled that the labor-and-delivery chart "spoke for itself" to the medical and nursing staff in the nursery. There was no additional legal duty for the nurse to verbally inform the nursery of the drugs administered during labor, apart from the proper notations the nurse had recorded in the labor-and-delivery chart. **Chiricosta vs. Withrop-Breon et al., 635 N. E. 2d 1019 (Ill. App., 1994).**