

Narcotics Diversion: Nurse's Defamation Lawsuit Against Former Employer Dismissed.

A charge nurse reported to the hospital's director of nursing that a narcotic checked out from the dispensing system was never given to the patient.

The narcotic was checked out for an agency nurse, who denied any knowledge and was working on a different unit from the patient who did not get the medication.

The director learned from the system's manufacturer that their machine allows temporary accounts to be created so that temporary employees like agency nurses can check out narcotics for their patients.

Further investigation revealed that the same regular nursing employee who created this temporary account had created many others that had been used to obtain eighty-eight doses of Vicodin or Percocet.

Hospital management realized the hospital was required by law to report to the state boards of pharmacy and nursing and the local police that narcotics diversion had occurred. Management did do.

When confronted, the nursing employee in question admitted she created the numerous temporary accounts.

She explained further that after setting up access for those individuals she departed the room and left it up to them to decide how to make use of their access to the hospital's narcotics stores.

However, if that were true it still was a violation of hospital rules and sufficient grounds for the nurse's termination, even if it could not be proven she stole the pills.

Based on the police investigation the nurse was indicted, but the prosecutor dropped the criminal charges after a while.

The nurse sued the hospital for defamation and wrongful termination. The Court of Appeals of Ohio dismissed her lawsuit.

Hospital management was required by law to report to the proper authorities, as they did, and no one else was told.

The flip side of the hospital's legal duty is immunity from a civil defamation lawsuit for having done what the law requires. Hospital management acted in good faith without malicious intent to harm the nurse's reputation. **Syqula v. Regency**, 2016 WL 2587345 (Ohio App., May 5, 2016).

The hospital was legally required to report to the state boards of pharmacy and nursing and the police when it came to light that narcotics diversion had occurred at the hospital.

The hospital's reports identified the particular nurse against whom there was strong evidence of unprofessional practices involving narcotics.

In general it is defamatory to communicate to a third party that a person has acted unprofessionally, if that causes harm to the person's reputation.

However, legal privileges exist which immunize some ostensibly defamatory communications.

One legal privilege arises from the fact that a number of different statutes require healthcare facilities to report to a number of legal authorities when there is evidence of theft or diversion of narcotics.

The hospital acted without malicious intent to harm the nurse's reputation.

Hospital officials divulged the details of her conduct to no one other than the legal authorities to whom the hospital was required by law to report.

COURT OF APPEALS OF OHIO
May 5, 2016

Confidentiality: Nurse Fired For Diverting Quality Assurance Document.

The administrator of a state-operated nursing home started proceedings under New York's civil service law to have a registered nurse removed from her job.

In her defense the nurse offered as evidence at her hearing an original incident report that she took from an internal quality assurance file at the nursing home.

At that point an additional charge was brought against the nurse for removing and disclosing a confidential document without permission which contained a resident's protected health information.

With the evidence for her civil service hearing the nurse included the quality assurance incident report about the medication error.

The document contained the resident's name, address, doctor's name and the prescribed medication and the original prescription itself was attached.

NEW YORK SUPREME COURT
APPELLATE DIVISION
May 5, 2016

The New York Supreme Court, Appellate Division, upheld the nurse's termination without having to consider the original charges against her. Misappropriating and revealing the confidential incident report was enough to get her fired.

The nurse had no permission from the nursing home to take the document from its files. Nor was there any excuse for violating the medical confidentiality of the resident to whom the document pertained.

The facility turned over copies of certain documents to the nurse's attorney, but this was not one of them. She apparently had already purloined the original from the file before the file was copied for the attorney. **Bruso v. Clinton**, __ N.Y.S.3d __, 2016 WL 2350555 (N.Y. App., May 5, 2016).