

LEGAL EAGLE EYE NEWSLETTER

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Narcotics Diversion: Accused Of Tampering, Nurse Wins Malicious Prosecution Lawsuit.

The District Court of Appeal of Florida approved a jury's award of \$539,657 to a nurse from her former employer, a nursing home, after she was fired and criminal charges were filed against her for alleged medication tampering and narcotics diversion.

The jury's award came after the criminal charges were dropped seven months after being filed and a letter was sent by the State Attorney's office stating she had been cleared of suspicion.

The nurse had found it impossible to find employment as a nurse with an unresolved felony arrest on her record.

Lack of Probable Cause For Accusations of Tampering, Diversion

When the nurse was first hired a nurse who had worked with her at another facility told her boss that the nurse was "bad news" and that she had been suspected of stealing narcotics at her last job.

At the end of a work shift the nurse did a med count with another nurse and everything added up.

A day or two later, however, it was noticed that some of the blister packs prepared by the pharmacy had been opened and re-taped.

Further investigation revealed that oxycodone and hydrocodone pills had been replaced with potassium supplements and Cardizems.



Lack of probable cause means that a complaint which led to criminal charges was initiated without reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the person accused was guilty of the offense of which he or she was being accused.

DISTRICT COURT OF APPEAL
OF FLORIDA
November 9, 2011

The situation was reported to the local police. When interviewed by a police detective the nurse's supervisor and co-workers repeated the suspicious gossip they had heard about her previous employment. Based on little more than second-hand gossip the detective filed criminal charges.

In fact, there were lots of other nursing personnel who had had possession of the keys to the med room and the blister packs could have been opened and re-taped on any one of several days before being discovered. It all added up to a lack of genuine probable cause to suspect this particular nurse.

After her firing, while the criminal charges were still pending against her, another theft of narcotics was discovered at the facility committed using exactly the exact method, opening the blister packs, substituting other pills for narcotics and re-taping them.

Following discovery of this theft a co-worker who worked hours before the nurse on the day in question was required to give a sample and tested positive for narcotics. She was fired. However, the nurse, her attorney, the local police and the State Attorney's office were never informed so that the charges could be dropped sooner. ***Alterra Health-care, ___ So. 3d ___, 2011 WL 5374765 (Fla. App., November 9, 2011).***

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