

Narcotics Diversion: No *Miranda* Warning Before Interview, Nurse's Indictment Upheld.

An LPN was contacted by an investigator for the Board of Nursing. He said he wanted to speak with her about a complaint that had been filed with the Board for narcotics diversion, that is, felony thefts of controlled substances.

The LPN agreed to meet him at the local public library. When the investigator arrived at the public library for the meeting he had an investigator from the Board of Pharmacy with him.

The three met in a small room with glass walls on three sides. The door was closed but not locked. The LPN sat on the side of the table closest to the door.

At the start of the one-hour meeting the two men told the LPN that criminal charges were probably going to be filed against her, but that they would recommend leniency in sentencing if she was willing to cooperate and give them the information they wanted.

After meeting with the LPN the two investigators contacted a detective in the local county sheriff's office and reported what she had had to say.

The LPN was indicted by the local grand jury on felony charges.

At no time during the interview at the library was the LPN given a *Miranda* warning, that is, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present during questioning and if you cannot afford one an attorney will be provided to represent you. Do you understand these rights? Are you willing to waive your right to remain silent and answer questions?"

The Court of Appeals of Ohio overruled the LPN's challenge to the indictment based on the fact she was given no *Miranda* warning before she made statements incriminating herself.

She did have the right to remain silent. However, the investigators had no duty to read her a *Miranda* warning advising her of that right because she was not in law enforcement custody. She came in voluntarily and could have just turned around and exited, the Court said.

Threatening prosecution or making promises did not change the fact she was not in custody and was not entitled to a *Miranda* warning before she voluntarily answered their questions. **State v. Gradisher, 2009 WL 4647378 (Ohio App., December 9, 2009).**