

Retaliation: Court Throws Out Nurse's Lawsuit, Reported Patient Abuse After Being Terminated.

An LPN called her supervisor at home to report that an agency LPN was not following the long-term care facility's procedures and was giving inappropriate care. The resident had to go in for emergency surgery as a result. In its recent unpublished opinion, the Court of Appeals of Minnesota did not elaborate any further than this on what exactly happened with the patient.

State authorities were not notified, although the facility itself did conduct an internal investigation. The court did not elaborate upon the outcome of the facility's internal investigation.

Unrelated Dispute

Leads to LPN's Termination

Three weeks later the LPN met with the director of nursing to discuss her work schedule.

At this meeting the LPN did not have anything to say about the inappropriate care incident that occurred three weeks earlier.

Again a week later the LPN met with the director of nursing, this time to complain that another LPN had been hired for the time slot the LPN had indicated in the earlier meeting she wanted for herself.

The LPN went to see the facility's administrator and human resources director at the end of her shift to express her dissatisfaction with the outcome of her meeting with the director of nursing.

The LPN did not get what she wanted at this meeting. She went out to the nurses' station near the patient-care areas and began creating a disturbance. According to the court record, she was asked to leave and the human resources director escorted her out of the building.

The next day the administrator returned the LPN's call, told her not to call back again and informed her she was fired.

The day after that she called the state Department of Health and reported the original patient-care incident.

When an employer takes adverse action against an employee soon after the employee reports actual or suspected abuse or neglect of a vulnerable person to the authorities, or threatens to do so, the law presumes the employee was the victim of employer retaliation.

That is, under these circumstances the employer has to prove the employer did not retaliate.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
March 18, 2003

The Department of Health determined that patient neglect actually had occurred and cited the facility for violation of relevant long-term care regulations.

No Retaliation Occurred

The court noted that the law very strongly protects an employee from adverse consequences *after* an employee has reported actual or suspected abuse or neglect of a patient to state authorities or even threatened to do so.

When adverse action is taken against such an employee soon afterward (within ninety days in Minnesota) the usual burden of proof is reversed. If the employee elects to take the employer to court the court will presume there was retaliation. The law forces the employer to prove there was no retaliation or the employee wins his or her case in this situation.

Having said that, however, the court threw out the LPN's retaliation suit and ruled she was terminated for cause. Her blow-up after her meeting with management justified termination. It had nothing to do with the earlier patient-care incident. ***Strickland v. Martin Luther Manor***, 2003 WL 1219204 (Minn. App., March 18, 2003).

Retaliation: Whistleblower's Suit Thrown Out, Complained Of Understaffing.

A registered nurse was fired from her position in a long-term care facility after various disciplinary problems.

She had also voiced her concerns over staffing levels at the facility.

To sue for wrongful discharge as a whistleblower the former employee must fit the legal definition.

The whistleblower's complaint must relate to a violation of the letter of the law by the employer which is a criminal offense or relate more generally to a hazard to public health and safety.

Furthermore, the employee must first report the problem to the employer in writing and follow up with a prompt written report to state authorities, or the employee is not strictly speaking a whistleblower and has no right to sue.

COURT OF APPEALS OF OHIO
March 19, 2003

The Court of Appeals of Ohio ruled she had no right to sue for wrongful discharge. She was not a whistleblower.

A healthcare worker must report a problem to his or her supervisor, then promptly follow up with a formal written report to state authorities, and then be faced with consequences, to be considered a whistleblower with the right so sue. ***McGuire v. Elvria United Methodist Village***, 2003 Ohio 1296, 2003 WL 1339167 (Ohio App., March 19, 2003).