

## Nurse Whistleblower: Court Upholds Suit.

The newly-hired director of nursing and the physician were on their regular weekly rounds checking on the residents of the assisted living facility who were sick.

The physician told the director of nursing to get a urine sample from a particular patient and have the sample sent to the lab.

The director phoned the lab to inquire whether her employer could legally obtain urine samples and also asked about blood samples. She was told a Federal Clinical Laboratory Improvement Amendment waiver was required, which the assisted living facility did not have.

When she complained to management she was told it was silly to apply for the required waiver for something so simple as urine or blood samples. The director pressed her complaints and was terminated.

The US District Court for the District of Kansas pointed to the US False Claims Act as valid grounds for the director of nursing to sue her former employer. A Medicaid reimbursement claim for a sample illegally obtained would be considered a false claim. An employee cannot be terminated for exposing a false claim. Lipka v. Advantage, 2013 WL 5304013 (D. Kan., September 20, 2013).

## Nurse Whistleblower: Case Dismissed.

After her termination a nurse sued her former employer claiming rights as a whistleblower.

The Court of Appeals of Michigan agreed with the nurse, at least in principle, that an employee cannot be terminated for refusing to perform an illegal act. Administering medication without a valid physician's order would normally be considered an illegal act.

The nurse noticed that there was a physician's order in her patient's chart for insulin for April but none for May or June.

When she went to the director of nursing she was told the nursing home's practice was that insulin orders remained in effect unless and until expressly discontinued by the physician.

The nurse had seen an order in another patient's chart discontinuing insulin.

The nurse was told to continue giving the patient the insulin per the old order, but the nurse, believing that was illegal, refused and was terminated.

The Court ruled there were no legitimate grounds to treat the nurse as a whistleblower and she had no right to sue for wrongful termination. Irwin v. Ciena Health Care, 2013 WL 5495560 (Mich. App., October 3, 2013).

## Nursing Documentation: Nurse Practitioner Did Not Make Note Of Patient Teaching In The Chart.

The patient complained of heartburn to the clinic's nurse practitioner, then missed two follow up appointments and then came in four months later complaining of epigastric pain and reporting tarry stools.

The nurse practitioner got an appointment for him with a gastroenterologist a few days later and set a follow up appointment with herself two weeks after that. The patient failed to keep both appointments.

More than a year later the patient came back complaining he had trouble swallowing. The nurse practitioner made another appointment with the gastroenterologist, for which the patient did show after rescheduling twice. The gastroenterologist scheduled an endoscopy a few days later, for which the patient failed to show.

***The deceased patient's family's expert witness faulted the nurse practitioner and the physician for failing to follow up when the patient missed his first appointment with the gastroenterologist, by scheduling another appointment for him, by informing the patient of the importance of seeing a specialist for his symptoms and by encouraging him to comply with their recommendation.***

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The gastroenterologist's office sent the patient a letter stressing the importance of the endoscopy to rule out cancer. When the patient finally had the endoscopy he was diagnosed with Stage IV stomach cancer which proved fatal.

In the trial of the family's lawsuit the family's nursing expert faulted the nurse practitioner for failing to educate the patient about the importance of following through with the specialist. The expert based that theory of legal liability on the fact that patient teaching as to the possible seriousness of the patient's symptoms and the need for prompt medical evaluation were nowhere documented in the chart.

Nevertheless, the Appellate Court of Illinois upheld the jury's verdict in favor of the nurse practitioner. Flanagan v. Boehning, 2013 WL 5433258 (Ill. App., September 24, 2013).