

Patient Abuse: Verbal Outburst Provoked By Patient Not Grounds To Fire Aide.

In March, 1996 we noted a case from the Appeals Court of Massachusetts in which the court ruled that a nursing home did not have grounds to fire a nurse's aide for swearing at a patient. The aide, fatigued from working a double shift, spontaneously swore back at a patient when he uttered a provocative racial insult toward her. (*Verbal Outburst Provoked By Patient's Insult Not Grounds To Fire Nurse's Aide, Court Rules.*, Legal Eagle Eye Newsletter for the Nursing Profession, (4)6, Mar., '96 p.8.)

The court ruling in that case was recently upheld by the Supreme Judicial Court of Massachusetts. The court approved the manner in which the aide in question had handled herself under the circumstances. The court faulted her employer for firing her over this incident.

The patient in this case was known to the caregiving staff and the administrators of the nursing home to be angry and argumentative. He often uttered racial slurs toward minority caregivers.

The aide agreed to work a double shift, starting at 7:00 am, due to a staff shortage. The patient in question ordered her out of his room first thing in the morning, so she left, reported the situation to her supervisor, and tried to avoid the man for the rest of the day shift.

To fire a nursing caregiver for verbal abuse of a patient, there must be a conscious, deliberate, intentional violation of the employer's policies forbidding mistreatment of patients.

An isolated, spontaneous verbal outburst at a patient, following a provocative racial slur from a patient known to be verbally abusive toward minority-group caregivers, particularly when the caregiver is under stress from overwork, is not viewed as deliberate, intentional abuse of a patient.

It is not to be condoned, but it is not grounds to terminate a nurse's aide from employment.

SUPREME JUDICIAL COURT OF
MASSACHUSETTS, 1996.

At the start of her second shift, the aide exchanged her patient assignments with an aide coming on duty so that the other aide would do this man's afternoon-shift care. However, she did go back into the man's room that evening, to care for his roommate. Through the closed curtain between the two beds, the patient uttered a provocative racial insult toward her, to which the aide responded with a spontaneous verbal outburst.

Two days later the aide was fired when she reported for work. She applied for unemployment, and was turned down. It was felt she had been terminated for good cause. The case was then reviewed by the courts, with the end-result that the aide was vindicated. Her firing, under the circumstances, the courts ruled was not justified.

The nursing home had a written policy in effect, set out in the employee handbook, that all patients were to be free from mental and physical abuse, and, further, that any employee could be discharged for inconsiderate treatment of patients or for rude, discourteous or uncivil treatment of patients.

The aide in question had received a copy of the employee handbook and had been made aware of the employer's policies during in-service training sessions on dealing with combative and demanding patients. She was aware that other employees had been terminated for abuse of patients.

The court strongly approved of the nursing home's efforts to deal with the problem of patient abuse before-the-fact. However, this aide had never been disciplined for or even accused of patient abuse before this incident. The employer's policies forbidding abusive conduct toward patients were sound, but to go so far as to fire a nursing caregiver for violation of those policies, it would take a conscious, deliberate, intentional violation of those policies, rather than an isolated, spontaneous outburst which the aide herself had tried to avoid. **Still vs. Commissioner of Employment and Training**, 672 N.E. 2d 105 (Mass., 1996).