

# Panic Disorder, Agoraphobia: Court Upholds Home Health Nurse's Suit For Defamation, Disability Discrimination, Retaliation.

A home health nurse had been diagnosed with panic disorder with agoraphobia in 1983. Her condition was in remission for a length of time, but her symptoms resurfaced in 1996.

## Symptoms Not Controlled By Medication

The nurse had sought treatment from a number of psychologists and psychiatrists, but she declined to take the medications they recommended for fear of addiction.

Instead, the nurse was attempting to self-manage her disorder by taking Fridays off during the winter months, forcing herself to go to public places during the day when fewer people would be around and by making an overall effort to become acclimated to leaving her home.

## This Nurse Has A Disability

The Federal courts have chosen to overrule the Equal Employment Opportunities Commission's (EEOC) regulations on psychiatric disabilities.

The EEOC's interpretation of the intent of Congress in enacting the Americans With Disabilities was that all psychiatric conditions are to be considered legal disabilities if they have the tendency to substantially impair a major life activity, even if the impairment is being controlled by the use of medication.

The Federal courts have said, to the contrary, that a psychiatric disability that is being controlled by medication such that it does not substantially impair a major life activity is not a disability. Cases have said that nurses whose depression is being controlled by medication are not disabled.

The upshot for this nurse's employer was that she was legally disabled and was entitled to reasonable accommodation.

## Reasonable Accommodation Was Refused

According to the Court of Appeals of Minnesota, the nurse's employer was at first willing to accommodate her condition by helping her with her self-management program, but changed its attitude and insisted she work full time with no flexibility, any hours her employer demanded.

***The elements of defamation require the victim to prove that the statement was false, that it was communicated to someone besides the victim and that it tended to harm the victim's reputation and lower the victim in the estimation of the community.***

***True statements are not defamatory.***

***There is a qualified privilege to communicate defamatory statements under some circumstances.***

***Because of the stake employers have in protecting themselves and the public from dishonest and incompetent employees, communications between employers' agents and between employers and potential employers made in the course of investigating and punishing employee misconduct have a qualified privilege.***

***The qualified privilege requires a reasonably thorough investigation. An employer cannot rest on accusations and second-hand hearsay and expect protection from the courts from a defamation lawsuit.***

COURT OF APPEALS OF MINNESOTA  
November 19, 2002

The nurse hired an attorney who was in the process of presenting her disability discrimination claim to a state human rights agency when she was fired.

## Circumstances of Termination Were Not Investigated

The nurse did not meet a client's disabled child at the school bus as her supervisor wanted. Her supervisor claimed she violated a direct order, which would be abandonment of a patient and grounds for termination. The nurse claimed she was only asked and had the option to decline.

Then the supervisor told a potential new employer the nurse had been fired for abandonment of a patient. The nurse claimed, and the court agreed, that was grounds to sue for defamation.

## No Qualified Privilege Against This Defamation Lawsuit

Ordinarily a former employer has the right to communicate derogatory information to potential employers. A qualified privilege against being sued for defamation exists when an employer's statement that turns out to be false and defamatory was preceded by a reasonably thorough investigation.

Here, however, according to the court, the supervisor did not interview the nurse or her co-workers to see what really happened before terminating the nurse.

## Employer Retaliation Was The Motive

The only rationale the court could see behind the termination was retaliation for filing a disability discrimination claim.

The court pointed out retaliation is grounds for a lawsuit whether or not an employee's disability discrimination claim is valid. This nurse did have a right to complain about reasonable accommodation being refused, but that was not necessary to sue for retaliation. ***Kuechle v. Life's Companion P.C.A., Inc.***, 653 N.W. 2d 214, 13 A.D. Cases 1396, 2002 WL 31554566 (Minn. App., November 19, 2002).