LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Stolen Prescription Form: Nurse Practitioner Implicated In Narcotic-Overdose Death.

A physician and a nurse practitioner employed in a Federally-funded community health clinic were originally named as defendants in a wrongful-death lawsuit arising out of the death of the nurse practitioner's daughter's friend from acute fentanyl poisoning.

The deceased was found dead with a partially dissolved 1600 mcg Actiq lozenge in her mouth. Post-mortem toxicology also found Xanax in her system.

The Actiq lozenge was apparently the last of six obtained by the deceased from a community pharmacy using a prescription form signed in blank by the physician and given to the nurse practitioner and then stolen by the deceased or given to the deceased by the nurse practitioner's daughter.

The daughter was charged with criminal offenses in connection with the death but died herself before her case went to court.

The investigation revealed that the deceased had previously come into possession of three other blank prescription forms from the same clinic signed by the same doctor and had used them to get drugs before she met her end.

The US District Court for the Middle District of Georgia ruled the physician and the nurse practitioner were negligent because their conduct in signing and handling blank prescription forms violated the clear letter of state law.

Civil liability was appropriate because it is foreseeable that illegally pre-signed prescription forms can be stolen, passed on, forged and used to obtain controlled substances to be used in an illicit manner which can cause a person's death.

However, the physician and nurse practitioner were employees of a Federally funded community health clinic. Under Federal law the US Government has had to step in as the defendant and try to defend their actions as they cannot be sued individually even if they were negligent and their negligence caused harm, a legal technicality not available to caregivers in the private sector or in many state-run healthcare settings.

The Government's argument will be that the nurse practitioner's daughter's criminal act supplying the form to her friend was an intervening cause that relieves the Government from liability, but the Court has not yet ruled on that issue. **Eaton v. US, 2012 WL 6203002 (M.D. Ga., December 12, 2012).**

Threat Of Violence: Nurse's Termination Upheld, Allegations Of Sexual Harassment Dismissed.

A nurse was fired after she made a remark to one coworker that was interpreted as a threat to shoot another coworker over a remark he made to her about her husband leaving her.

After being fired she sued the hospital for sexual harassment and for retaliation for reporting sexual harassment. The sexual harassment, she said, involved the coworker whom she later threatened being a little too friendly, smiling and staring at her too much and making one vulgar sexually-oriented remark to her.

The US Court of Appeals for the Tenth Circuit (Oklahoma) dismissed the nurse's case.

A lawsuit for a sexually hostile work environment can only be based on conduct that permeates the workplace with intimidation, ridicule and insult.

The reason given by the hospital for the nurse's termination, that she made a threat of violence against a fellow employee, was not a pretext to cover up a plot to fire her for her complaint about sexual harassment.

The nurse told a coworker that she owned a gun and knew how to use it and said that what her coworker said to her was the kind of thing that gets people shot.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
December 19, 2012

Garden-variety boorish, immature, juvenile and annoying behavior is not uncommon in the American workplace and does not give grounds for a lawsuit for sexual harassment, the Court said.

Another important factor was that the nurse was the perpetrator's supervisor, not the other way around.

The most important factor in the Court's mind was that the hospital had legitimate, non-discriminatory and non-retaliatory grounds to terminate the nurse, her threat of violence against a coworker.

She reportedly told a coworker she owned a .357 magnum handgun and knew how to use it and stated that the kind of remark another coworker voiced to her about her marriage was the kind of thing that gets people shot. **Gaff v. St. Mary's Reg. Med. Ctr., 2012 WL 6604579 (10th Cir., December 19, 2012).**

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