

Narcotics Diversion: Nurse's Behavior Created Reasonable Suspicion, Justified Drug Test.

The US Court of Appeals for the Federal Circuit recently upheld the actions of a med/surg unit nursing manager in a US Veterans Administration hospital who believed a staff LPN's behavior created reasonable suspicion justifying her to demand the LPN to undergo a drug test.

The drug test, legally valid and binding because it followed only upon reasonable suspicion, was positive for morphine and the LPN was fired.

Suspicious Behavior

The nurse manager observed all of the following on just one day shift:

The most straightforward evidence of diversion was the LPN's charting of a 4:13 p.m. administration of a dose of a pm narcotic for pain for a patient who had been transferred off the unit at 3:00 p.m.

One of the LPN's patients complained to other nurses that he had asked for pain medication but never got it.

The LPN in question removed oxycodone and lorazepam from the Omnicell for three different patients, but none of the drugs actually being given could be verified by cross-checking the bedside bar code medication administration data or by referencing the patient's individual charts.

The court was not swayed by the LPN's argument that failing to record meds is just sloppy nursing practice, maybe calling for a corrective reprimand. With addictive or habit-forming drugs it is more likely evidence of diversion.

The LPN also apparently used three other nurses' access codes besides his own to get into the Omnicell cabinet.

After his drug test came up positive for morphine the LPN finally did admit to a police detective he had stolen narcotics.

However, if his rights were violated in the first place by requiring a drug test without reasonable suspicion, the whole legal process would have fallen like a house of cards. **Davis v. Dept. of Veterans Affairs, 2006 WL 3251733 (Fed. Cir., November 9, 2006).**

A supervisor's right to demand a drug test, with reasonable suspicion, comes from governmental regulations affecting public-sector employees or from a collective bargaining agreement with the nurses' union in the private sector.

The VA hospital had an established policy that a nurse could be required to take a drug test, but only with reasonable suspicion that the nurse was using or diverting narcotics.

A positive drug test is grounds to remove a nurse from his or her position for violating the institution's drug-free workplace policy.

If the nurse tests positive for the very same drugs the nurse was suspected of diverting, the case can be turned over to law enforcement for a criminal investigation.

The whole process falls apart, however, if the nurse's legal rights are violated at any point. A nurse whose rights were violated in order to prove he or she was diverting narcotics cannot be disciplined and may be able to sue.

UNITED STATES COURT OF APPEALS
FEDERAL CIRCUIT
November 9, 2006