

Nursing Director Challenges Policy Nurses Not To Contact Family Members: Court Upholds Suit For Retaliatory Discharge.

The Court of Appeals of Ohio recently upheld a lawsuit filed by a former director of nursing against her former employer a nursing home.

The lawsuit centered on the nursing home's policy that nurses, from the director of nursing down the line, were not to contact the family of any nursing home resident without obtaining prior approval from the facility's administrator.

The director of nursing believed the policy was abusive and a violation of the state's nursing home residents' bill of rights law. After she complained to a senior-citizens advocacy group and to the state Department of Health she was fired.

The court acknowledged an affidavit from another nursing home administrator that a no-contact policy would be irrational and unfounded and would prevent nurses from properly doing their jobs.

However, the wisdom of the nursing home's no-contact policy was not the point. The issue was retaliation.

Retaliation Prohibited

The nursing home residents' bill of rights law protects whistleblower caregivers from employer retaliation for reporting what is or is believed to be abuse or neglect to the state Department of Health.

Promissory Estoppel

An additional wrinkle in this case was how the court applied the legal rule of promissory estoppel.

The administrator assured the director of nursing she would be safe from repercussions if she spoke freely with her about her concerns with the no-contact policy and if she gave her the details of her complaints to the advocacy group and the Department of Health.

Then the administrator broke her word and turned around and fired her. That was a wholly improper breach of promise, the court ruled. Dolan v. St. Mary's Memorial Home, 2003 Ohio 3383, 2003 WL 21472746 (Ohio App., June 27, 2003).

The nursing home residents' bill of rights law gives nursing home residents the right to be free from abuse and to be treated with courtesy and respect.

The bill of rights law provides nursing home residents with legal remedies and procedures when their rights have been violated.

The bill of rights law not only encourages but actually requires licensed healthcare professionals to report abuse of nursing home residents to the state Department of Health.

The law prevents retaliation against those who report a violation of a resident's rights.

An employer accused of retaliation can respond by showing a non-retaliatory motive for firing an employee. However, it is a circular argument for the nursing home administrator to claim the director of nursing was fired for refusing to promise not to contact family members without permission if the no-contact policy was abusive.

COURT OF APPEALS OF OHIO
June 27, 2003

Misconduct: Firing Upheld For Abusive, Threatening Language.

A certified nurse's aide was warned verbally, warned in writing and then terminated for using abusive language in arguments with supervisors and for threatening co-workers with bodily harm.

The Court of Appeals of Minnesota upheld the firing, in an unpublished opinion, seeing conduct that fell within the legal definition of employee misconduct

Employee misconduct is any intentional conduct, on or off the job, that disregards the standards of behavior that an employer has the right to expect of the employee or that disregards the employee's duties and obligations to the employer, or

Negligent or indifferent conduct, on or off the job, that demonstrates a substantial lack of concern for the employment.

COURT OF APPEALS OF MINNESOTA
UNPUBLISHED OPINION
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For example, the aide responded to criticism from a supervising nurse by stating, "Don't mess with me. I will call my boyfriend and he will deal with you." She yelled at another that she was going to, "... take it downstairs and finish her off."

The court pointed out this was intentional misconduct that clearly violated the standards that an employer is entitled to expect from an employee and the misconduct continued after the employee had been warned it would not be tolerated. Thomas v. St. Paul's Church Home, 2003 WL 21499917 (Minn. App., July 1, 2003).