

LEGAL EAGLE EYE NEWSLETTER

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Whistleblower: Court Affirms Jury Verdict For Nurse Terminated For Complaints Of Abuse.

An LPN worked for an agency that provided in-home care for developmentally disabled individuals.

The nurse's patient was on home hospice care and had been diagnosed with gastrointestinal reflux disease, dysphagia and chronic obstructive pulmonary disease and had a history of gastrointestinal bleeding.

She received tube feedings and occasionally was allowed very limited access to liquid so-called pleasure foods by mouth. She was also on continuous oxygen.

The nurse noticed wheezing, a sign of lung congestion, and a fever in assessing her patient at the start of a shift. Review of the previous nurse's notes showed the patient had been fed potato salad, a solid food.

On a subsequent visit the nurse found the patient sitting at the dining room table as if she had been eating, but the last nurse's flow sheet said she had been given nothing by mouth.

Once the patient protested that the other nurses let her have more to eat.

The nurse was well aware of the hazard that aspiration pneumonia represented for this patient. The physician's standing orders called for her to be taken to the hospital for x-rays, lab work and evaluation if signs of aspiration pneumonia appeared.



A healthcare employee who reports to authorities or complains to superiors about illegal or unsafe practices has a whistleblower's legal rights.

To be protected from employer retaliation as a whistleblower an employee must have been trying to serve a public purpose, like protecting a vulnerable person, and have suffered retaliation as a result.

COURT OF APPEALS OF TENNESSEE
August 16, 2017

When the nurse saw the patient throw up projectile vomit containing chunks of solid food she knew she definitely had to stop the other nurses from overfeeding the patient.

The nurse complained to her supervisor, then to her supervisor's supervisor, then to the company's regional director, then to the state.

A state investigator could not determine that abuse had occurred.

The nurse was fired, allegedly for not renewing her license on time.

The nurse sued her former employer for wrongful termination. The Court of Appeals of Tennessee upheld a verdict of \$425,000 in the nurse's favor.

The Court ruled the nurse fit the legal definition of a whistleblower. A whistleblower is someone who reports illegal activity to the authorities or who complains within or outside an institution in order to serve a public purpose, in this case the public purpose of protecting a vulnerable person from abuse.

The only requirement to be a whistleblower is to have a good faith belief in the rightness of the complaint. It is irrelevant to the whistleblower's right to be free from retaliation whether the complaint is vindicated after the fact by an official investigation. ***Upshaw v. Community, 2017 WL 3525368 (Tenn. App., August 16, 2017).***

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