

Whistleblower: Nursing Home Employee's Rights Vindicated.

The marketing director at a long-term facility with an Alzheimer's wing that housed thirteen individuals was one of four people who witnessed administrators forging employees' signatures on bogus test papers for dementia-specific staff in-service training that was expressly required by state regulations for specialized dementia facilities.

It happened while state inspectors who happened to drop by were busy in another part of the facility.

One of the witnesses, the director of nursing, resigned that same day.

The marketing director brought her concerns to corporate management by speaking with a former co-worker in another one of the corporation's facilities. Higher-ups from corporate HQ came to the facility to investigate, decided that she was spreading lies and fired her.

Weeks later state inspectors returned to the facility to investigate a complaint by the former director of nursing, looked at the documents more closely, determined that they were forged, levied a \$10,000 fine and placed the facility's license on conditional status.

Whistleblower Lawsuit Validated

The fired marketing director had not just voiced general concerns about quality of care or patient safety, but had pointed out a clear and direct violation of a very specific requirement outlined in black and white in state regulations which undoubtedly applied to her employer's business.

The Supreme Court of Iowa ruled the marketing director had rights as a whistleblower which her employer violated. The Court affirmed a jury verdict in her favor for \$178,000 for lost pay and benefits and emotional distress.

To be true a whistleblower with legal rights an employee must report an unmistakable violation of the specific language of a particular law or regulation.

The law cannot lock in employment security as a whistleblower with special legal rights for every employee who voices a disagreement with management or who reports vague, undefined concerns over quality of care or patient health or safety. **Dorshkind v. Oak Place**, __ N.W. 2d __, 2013 WL 3958293 (Iowa, August 2, 2013).

The fired employee witnessed managers at the facility, while inspectors were busy in another part of the building, go into an office, photocopy blank post-test papers for the in-service dementia training, mark the multiple-choice answers and sign people's names, even taking the precaution of using different pens.

A healthcare employee is protected against employer reprisals as a true whistleblower only when the employee blows the whistle on action by the employer which violates a clearly defined and well-recognized public policy.

Public policy in whistleblower cases is more specific and exact than generalized concepts of fairness or justice or generalized concern for patients' health and safety.

Public policy in this context is defined by specific standards set out expressly in state and Federal statutes and regulations.

In this case state regulations for specialized dementia facilities required six hours of dementia-specific education and training for all staff within ninety days of hiring and outlined eleven topic areas that had to be included.

SUPREME COURT OF IOWA
August 2, 2013

Inmate Suicide: Court Finds Deliberate Indifference.

A foreign national hanged herself in her cell with her clothing while held in a county jail at the behest of Federal officials pending a visa-revocation hearing.

Jail and prison caregivers have to recognize that suicide is a significantly higher statistical risk among incarcerated individuals with the same mental health issues.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
August 12, 2013

The US Court of Appeals for the Seventh Circuit (Illinois) found grounds for a lawsuit by her family.

Suicide risk is a serious medical need. Deliberate indifference to a serious medical need is a violation of an inmate's rights. State governmental subdivisions must honor the rights of all persons subject to the state's jurisdiction, including a foreign national being held in a county jail.

Suicide Risk Ignored

The Court pinpointed a clinical social worker employed by the jail as the one responsible for this inmate's mental health needs. The social worker saw the signs but failed to implement suicide precautions.

The Court noted that incarcerated individuals have a much higher statistical suicide incidence than persons on the outside with the same mental health issues. Although wider recognition of the risk has led to improvement, the still ominous statistics are something jail and prison caregivers must take into consideration.

The jail nurse who responded to the incident, the Court said, was not at fault for failing to start CPR. The patient unfortunately was obviously already dead and CPR would have been pointless.

The jail director of nursing was not involved in this patient's care and had no reason to know she was potentially suicidal. **Belbachir v. McHenry Co.**, __ F. 3d __, 2013 WL 4946454 (7th Cir., August 12, 2013).