

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Whistleblower: CNA Protected From Firing, Complained About Patient Safety Issues.

After the CNA had worked at the nursing home for seven years the facility decreased staffing levels on her shift so that there were usually three or four CNAs working on her unit, rather than four or five as before.

This meant that CNAs were sometimes unable to get to the residents promptly when they rang their call bells, causing delays both in helping residents use the bathroom and in transferring residents from their beds to chair or wheelchairs.

These delays put residents at higher risk for falls, the CNA believed, because the residents would try to get out of bed by themselves.

The CNA spoke to the director of nursing regarding her concerns about the staffing levels. She said she was worried that CNAs would not be able to respond to call bells promptly.

She also reported to at least two charge nurses numerous times that residents were upset that their call bells were not being answered promptly.

She did tell at least one charge nurse she was very concerned about the safety of the residents when she was not able to get to them on time.

After a power outage in the facility, with only three CNAs on duty in the unit, the CNA complained there were not enough CNAs to help the residents.



***The CNA complained to the director of nursing, charge nurses and a nurse educator that reduced staffing on her unit was putting residents at increased risk of falls.***

***When the CNAs were not able to respond promptly to the residents' call bells the residents would try to get up to the bathroom or try to transfer on their own.***

SUPREME JUDICIAL COURT OF MAINE  
December 15, 2015

Days after that complaint the director of nursing confronted the CNA with a second-hand report that she had hit a resident on the hand. The CNA pointed out she was not working on that resident's unit that day. Four days later the director of nursing fired the CNA.

The Supreme Judicial Court of Maine upheld the CNA's right to sue her former employer for wrongful termination.

She is a whistleblower who was terminated for voicing good-faith concerns about patient safety. Good faith means the CNA genuinely believed in what she had to say.

The Court discounted the facility's argument in its own defense that the facility's reduced staffing levels did not violate state regulations.

The Court ruled that an employee is legally protected as a whistleblower for reporting or complaining about a violation of a state or Federal law or regulation, or for complaining about something the employee genuinely believes to be a threat to patient safety even if the employer has not violated the express letter of the law.

The timing of her firing was highly suspicious that retaliation was her employer's true motive. ***Cormier v. Genesis***, \_\_ A. 3d \_\_, 2015 WL 8730694 (Maine, December 15, 2015).

Inside this month's issue...

January 2016

New Subscriptions  
See Page 3

Whistleblower/Patient Safety Issues/Wrongful Termination  
Nurse/Arrest Warrant - Nurse/Catheterization - Swan-Ganz Catheter  
Diabetic Patient/Hypoglycemia - Skin Care - Nurse/DUI  
Nurse/Medication Error/Fraudulent Concealment/Statute Of Limitations  
Nurse/Transgender Blood Donor - Nurse/Hospital/Computer Fraud  
Drug Rehab/Opioid Toxicity/Patient Death - Schizophrenia/Psych Med  
Heparin/Physicians' Orders - Hospital Discharge - Dialysis  
Vulnerable Adult/Abuse - Stress Test - New CMS Regulations