

Whistleblower: Aide Can Sue For Wrongful Termination, Had Raised The Issue Of Abuse Regarding Patient's Fall.

A certified nursing assistant worked in a nursing home as the staffing coordinator.

She was approached by an aide who reported to her that two weeks earlier a patient had fallen and been bruised. The aide had offered to assist the other aide in transferring the wheelchair-bound patient from her wheelchair, but the other aide refused to let her. The next thing the aide saw was the patient on the floor with no gait belt anywhere in sight. The aide said she had already informed the administrator and acting director of nursing, but nothing was being done.

The same day an LPN also approached the staffing coordinator about the same incident. The LPN did not actually see it happen but wanted to voice her concern that nothing was being done.

The staffing coordinator corroborated the incident with the aide who helped get the resident off the floor after it happened, then reported the incident to the state department of health and human services.

The staffing coordinator came in and found that the lock had been changed so she could not get into her office. She was told she had to resign.

Whistleblower's Wrongful-Termination Lawsuit Upheld

The Supreme Court of Nebraska upheld her right to sue and endorsed the jury's \$79,000 verdict in her favor, that is, \$4,000 lost income while she found another job and \$75,000 for mental anguish and emotional distress.

Improper handling of a vulnerable adult by a paid caregiver is abuse. Nurses, aides, physicians, etc., are mandatory reporters of such abuse, that is, they must report it to the authorities and they are protected by law from employer retaliation for doing their legal duty in this respect. Wendeln v. Beatrice Manor, Inc., 271 Neb. 373, ___ N.W. 2d ___, 2006 WL 903598 (Neb., April 7, 2006).

The staffing coordinator believed in good faith that a two-person assist with a gait belt is the only proper method to transfer a wheelchair-bound patient from a wheelchair.

She corroborated that one person alone tried to transfer the patient, with no gait belt, and that the patient fell, was injured and needed pain medication for her injuries.

The legal definition of abuse includes any knowing, intentional or negligent act by a caregiver which results in physical injury to a vulnerable adult.

Nursing caregivers fall within the class of persons who by law must report abuse of a vulnerable adult in their care to proper legal authorities.

It is not the usual case, but one form a whistleblower lawsuit can take is an employee suing a former employer for damages for being terminated for carrying out her legal duty to report what she believed in good faith to have been an episode of abuse.

SUPREME COURT OF NEBRASKA
April 7, 2006