

Nurse As Whistleblower: Case Against Hospital Not Proven.

A senior nurse manager in the surgery department was asked to apply for a position in some other hospital unit besides surgery because her job performance in surgery allegedly was substandard.

She found another position at the same hospital with the same salary and benefits as before, but then abruptly resigned and filed suit against the hospital for violation of New York's healthcare employees' whistleblower statute.

New York's whistleblower law, like similar laws in other states, protects a healthcare employee from employer retaliation who reports or threatens to report any practice, procedure, action or failure to act which violates any law, rule, regulation, or departmental interpretive ruling.

NEW YORK SUPREME COURT
APPELLATE DIVISION
September 29, 2009

The New York Supreme Court, Appellate Division, dismissed her case.

Even if the nurse could prove she was asked to transfer out of surgery because of her complaints about the quality of care, not because of substandard performance, she still was not able to point out specifically the statutes, regulations or official guidelines the hospital was violating with the conduct she was complaining about.

Whistleblowers are protected from retaliation for complaining about or reporting improper patient care. However, improper patient care in the whistle-blowing context refers only to practices or procedures that violate the law. Luiso v. Northern Westchester Hosp. Ctr., __ N.Y.S. 2d __, 2009 WL 3136150 (N.Y. App., September 29, 2009).