

Insights, News & Events

## BE CAREFUL WHAT YOU SAY: ALLEGATIONS OF WORKER MISCONDUCT MIGHT BE DEFAMATION

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Healthcare institutions have a moral and legal obligation to promote patient safety as an essential component of patient care. Supervisors and managers must be supportive of their staffs while remaining vigilant about the enforcement of appropriate standards of care. Staff members who fail to meet those standards are subject to discipline, up to and including termination, and may also be reported to the appropriate licensing board or agency. Sounds simple enough, right? Wrong.

In the 2015 case of *Wayt v. DHSC, LLC d/b/a Affinity Medical Center*, an Ohio jury awarded a nurse \$2 million dollars in damages, finding that the nurse's employer defamed her when it fired her for misconduct and reported its findings to the state board. The case offers several important lessons for healthcare employers.

### **Nurse's Termination Leads To Trouble**

Ann Wayt was a registered nurse who had been employed since 1987 at what is now called Affinity Medical Center. In September 2012, the hospital terminated Wayt's employment after it concluded that she had provided inadequate patient care during one of her shifts and then tried to cover up the substandard care by creating falsified patient records. The hospital

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also sent a complaint to the Ohio Board of Nursing seeking to have Wayt's nursing license suspended or revoked. Prior to her termination, Wayt had never been disciplined in her 24-year tenure at the hospital and had even been recognized in 2008 for nursing excellence.

### **Labor Board Orders Reinstatement**

Her union, the National Nurses Organizing Committee, lodged a complaint against the hospital with the National Labor Relations Board alleging that its termination of Wayt was improper. The union alleged that her termination was motivated not by any misconduct, but by her support of union-organizing activities, and that the termination violated Section 8 of the National Labor Relations Act. An administrative law judge agreed, ordering that Wayt be reinstated to her position with full back pay and benefits.

### **Civil Lawsuit Leads to \$2 Million Verdict**

Wayt also initiated a civil action in Ohio state court alleging that the hospital's charges of misconduct were false, malicious, and defamed her character. The hospital denied those allegations and argued that Wayt had, in fact, falsified patient records and that its termination was justified. In addition, the hospital asserted that any allegedly defamatory statements had not been "published" to a third party as they had only been shared with limited hospital personnel necessary to investigate the issues. Finally, the hospital argued that any allegedly defamatory statements were protected by legal privilege.

The judge and jury rejected all those arguments, and the jury awarded Wayt \$800,000 in compensatory damages and \$750,000 in punitive damages, while the judge awarded her attorneys' fees. This was, of course, on top of the administrative law judge's award of back pay and benefits for the termination, and the order that she be reinstated to her old job.

### **Lessons Learned**

The facts of this civil defamation case may be a bit unusual, as the jury verdict followed allegations of

union-organizing retaliation and an ALJ finding in the employee's favor. Still, the case provides important lessons for healthcare employers to keep in mind when they receive a report of misconduct or inadequate patient care. Supervisors and managers receiving reports of misconduct should:

- share the information only with those who have a legitimate business need to know;
- conduct a thorough and evenhanded investigation into the circumstances of the alleged misconduct;
- if misconduct is determined to have occurred, carefully consider whether the appropriate response is training, disciplinary action, termination, or reporting to a licensing board or agency (keeping in mind legal reporting requirements and the way in which prior similar violations have been handled); and
- be prepared to articulate legitimate business reasons, based on identifiable facts, for treating a particular violation differently than others have been treated.

At the end of the day, a healthcare employer must put patient care and safety first, and take the actions it deems necessary to further that goal. However, by developing a protocol for the handling of reports of employee misconduct, you can limit your potential exposure to employee claims of defamation.

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