

## **Certified Nursing Assistant's Conduct Leads to Voluntary Surrender of Her Certification**

### **Avoiding Liability Bulletin - July 2017**

Nurse Aide and Certified Nursing Assistant (CNA) practice has been the subject of a few of these bulletins. If you are a nurse aid or assistant, you know how important your practice is to the patients to whom you provide care as well as to the health care team with which you work.

As you also know, your authority to practice as a nurse aid or nurse assistant is a privilege and not a right. Adherence to your state laws and regulations, and the governmental agency that administers and enforces your practice, is essential.

In some instances, the agency is a department of public health, for example. In other instances, it is the state board of nursing that has the authority to regulate Nurse Aides and Nurse Assistants.

In the following case<sup>1</sup>, involving the Wyoming State Board of Nursing, a CNA's conduct that was far beyond the scope of her CNA practice cost her her certification.

An advanced practice registered nurse (APRN) who was a Family Nurse Practitioner reported to the Drug Enforcement Agency (DEA) that Tina Rotert, a CNA used the Nurse Practitioner's DEA registration number without her consent and "unlawfully prescribed various controlled substances".

The prescriptions written by the CNA were for herself and her husband. In addition, Rotert falsified medical records to show that the Nurse Practitioner had documented the prescriptions.

Rotert had written these prescriptions and falsified the Nurse Practitioner's medical records from 10/1/2010 to 9/27/2011.

Further investigation found that the CNA also prescribed controlled substances from a Physician's Assistant (PA) "on an average of three times a week", again using the PA's DEA registration number without the PA's consent.

Criminal charges were brought against Rotert and she plead guilty to three (3) counts of Obtaining Controlled Substances by Fraud. Rotert was sentenced to sixty (60) days jail time for each count, which were to be served concurrently. If she obtained an evaluation and completed recommended treatment in the State of Maryland (and returned there) as ordered by the Board of Nursing of Wyoming, a suspension of six (6) months of her sentence would occur.

The Wyoming Board of Nursing duly sent Rotert a Notice of Intent and Stipulation and Order for Summary Suspension of her certificate in lieu of proceeding to a formal contested case hearing for summary suspension.

Rotert responded that she wished to voluntarily surrender her certificate. After receiving this written notification and a call from Rotert's attorney, the Wyoming Board of Nursing cited the alleged violations of the Wyoming Nurse Practice Act and its Rules, including the disciplinary grounds for CNAs that, if proven by clear and convincing evidence, could result in a disciplinary action against Rotert. They comprised:

- unauthorized use of [a] controlled substance
- conviction of a misdemeanor or felony adverse to [the] practice of nursing
- fraud and deceit
- unprofessional conduct
- misappropriation of property, and
- failure to conform to prevailing nursing assistant standards, even when no injury to a patient occurs

The Board of Nursing accepted the voluntary surrender of the CNA's certificate.

Although Ms. Rotert's deeds are ones that you would never entertain in your practice as a CNA, Nurse Aide or Nurse Assistant, her case and its result have important implications for you. They encompass:

1. Never use another person's license number, DEA registration number, computer code access number or any other legal identifier as your own;
2. Never falsify any documentation that you do in connection with your practice as a Nurse Aide or Nurse Assistant;
3. Know the "prevailing" Nurse Aide and Certified Nursing Assistant (CNA), standards of practice and adhere to them without fail;
4. Seek treatment for a drug or alcohol problem, or any other health problem, that affects your practice;
5. Don't exceed the scope of your Nurse Aide and Certified Nursing Assistant (CNA) practice in any way;
6. Don't do "favors" for friends or family members that may result in a professional disciplinary action against you;
7. Remember that you can be disciplined by the agency or board that administers and enforces your Nurse Aide and Certified Nursing Assistant (CNA) practice even if no injury to a patient or another occurs; and
8. Be certain to obtain legal representation from a nurse attorney or attorney if you receive notice that you may be disciplined by your state board of nursing.

1. In The Disciplinary Matter of Tina Rotert, Certified Nursing Assistant, Certificate Number 20240, Docket Number 11-050—MTX, Settlement Agreement, Stipulation And Order For Voluntary Surrender, November 1, 2011.

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