

DID THIS NURSE PRACTITIONERS' EMPLOYMENT CONTRACT SUPPORT HER BREACH OF THE CONTRACT LAWSUIT?

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You may be used to reading about an APRN as a defendant in a lawsuit alleging professional negligence, but APRNs can, and are, plaintiffs in lawsuits as well.

APRNs are often employed by a health care facility. When they are employed, it is fairly common for the nurse practitioner to have an [employment contract](#), which spells out salary, benefits, duties, and other terms and conditions of the employment.

Every contract entered into includes an [implied covenant of good faith and fair dealing](#) which relates to the performance of the contract entered into.

If the contract is not adhered to, by either the nurse practitioner or the employer, [breach](#) of the contract occurs. A breach can be the result of any aspect of the contract and the injured party can sue for that breach.

In an interesting 2022 Minnesota case, a nurse practitioner with a Doctor of Nursing Practice Degree, sued several of her employer's employees alleging they breached their contract with her, including the covenant of good faith and fair dealing, made defamatory statements about her, violated the *Health Care Quality Improvement Act of 1986*, and because they were employees, her employer was [vicariously liable](#).

Facts Leading Up to The Case and The Trial Court's Decision

Sharon worked at a health care facility as a nurse practitioner and informed the employer that she was resigning from her position in three months, pursuant to her employment contract.

The day before her resignation was to take place, she participated in a care team procedure, "donation after circulatory death". A patient was "very near death" and was a "good candidate for organ donation." Only comfort care is provided during this procedure which includes medication to manage any symptoms of distress during the dying process.

Sharon's role was to manage and dose the medications intended for comfort care. She initiated a "continuous drip" that included pain medication and a sedative.

At shift change, a doctor replaced Sharon and she “performed a brief [hand-off](#) with the arriving physician.” The patient did not die and was returned to “full care” status.

Concerns surfaced about how Sharon handled the care of the patient. Specifically, the facility was concerned if she met “minimum standards of acceptable and prevailing practice in the management and dosage of medications.”

After a peer review and several meetings with Sharon, she was told that the facility’s investigation was completed and that her practice did not meet minimum standards applicable to the situation.

A report was also made to the state board of nursing, alleging that she failed to provide a thorough hand-off to the physician, administered excessive medications, and failed to meet applicable minimum standards. A report was also sent to the National Practitioner Data Bank (NPDB).

The board determined that no disciplinary action was warranted and the NPDB voided the report because it didn’t meet its reporting requirements.

The defendants filed a Motion for Summary Judgment, stating there was no dispute about the facts of the case and they should win the case on the merits without a trial, and the trial court judge granted their Motion. Sharon appealed that decision.

Appellate Court Decision

Based on the trial court’s findings and the facility’s policies applicable to Sharon’s employment contract, the Appellate Court affirmed the trial court’s decision and held the following:

- Sharon did not present any evidence that a *breach of her contract* with the facility or its employees took place so the trial court did not err in dismissing that claim.
- The investigation conducted by the facility into Sharon’s not meeting minimum applicable standards was consistent with its credentialing policy
- Since Sharon was not disciplined by the facility, the facility’s fair-hearing policy was not violated
- The facility’s bylaws clearly allowed for all professional staff members to be subject to investigation, so there was no breach of her contract of employment
- The reports to the state board of nursing and the NPDB did not violate the covenant of good faith and fair dealing since Sharon did not present any evidence that the reports were made “in bad faith or bad motive”
- The contents of the reports to the state board of nursing and the NPDB might raise a fact question as to the “defamatory implications” of them, but the facility and its employees had a legitimate reason for sharing the information with the two entities and therefore a [qualified privilege](#) to share the information applies. Hence no defamation.
- No private cause of action exists under the HICQIA
- Because Sharon’s claims against the facility’s employees were dismissed, and because her

contract was with the facility and not it's employees, no vicarious liability exists for the facility.

Implications for Your Practice

The trial court complaint, or the Appellate Court decision, did not specify how Sharon's care during the "donation after circulatory death" procedure did not conform to the minimum acceptable and prevailing standards of practice for management and dosage of medications.

Even so, it is essential that your management and dosage of medications conform to acceptable standards of nurse practitioner practice in any patient care situation.

Although this case is not treated as precedential (not authority for subsequent cases) in Minnesota, it does provide guidelines for any nurse practitioner. They include:

- Before signing a contract of employment, have it reviewed by a nurse attorney or attorney who represents advanced practice nurses
- Ask for other documents that effect your policy, such as the facility bylaws and credentialing policy, and have those reviewed by your attorney as well
- Have your attorney explain applicable, additional state and federal laws that impact your employment status
- Understand that reports to the state board of nursing and the NPDB, among others, are protected as being reported "in good faith" so that you would need to prove the report(s) was made "in bad faith" or "with "malice" in order to prevail on such an allegation
- You must overcome a Summary Judgment Motion by solid and clear evidence surrounding the breach of your employment contract claim
- Retain the nurse attorney or attorney you consulted with to represent you in your breach of contract lawsuit, since this type of case would not be covered under your professional liability policy and such a case cannot be handled by you representing yourself

This information is for educational purposes only and is not to be taken as specific legal or any other advice by the reader. If legal or other advice is needed, the reader is encouraged to seek such advice from a nurse attorney, attorney or other professional.