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Federal Court: Nurse Lawfully Terminated For Alleged Elder Abuse

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Litigation often arises after an employee is discharged, particularly in union settings. A recent case from the U.S. Court of Appeals for the District of Columbia Circuit shows that companies can set themselves up for success in these cases when they show consistency in enforcement of workrules.

At issue in the [case](#) was a nurse at an elder-care facility who was suspended pending investigation of alleged elder abuse and then ultimately terminated. The nurse was an active member of the Service Employees International Union Local 2015 (SEIU). Specifically, the employer found that the nurse had acted improperly during an off-site doctor's visit with an elderly patient, including by telling the patient, "If you don't knock that off, I'm going to beat your ass." Staff at the doctor's office confirmed the comment by the nurse. Because the company had consistently enforced a zero-tolerance policy with respect to elder abuse, it terminated the nurse for the incident.

The SEIU union then filed an unfair labor practice charge with the National Labor Relations Board (NLRB) alleging the termination was unlawful. The union claimed the termination related to the nurse's union activities. An Administrative Law Judge (ALJ) for the NLRB determined that the employer was justified in ending the nurse's employment in light of its consistently enforced prohibition on elder abuse. The full NLRB, however, overturned the ALJ's decision, ruling it believed the discharge was improperly motivated by

union animus.

The company appealed the Board's decision to the D.C. Circuit and the federal appeals court reversed the NLRB. The court agreed with the ALJ's analysis and determined the company's evidence of its consistently enforced elder abuse policy negated any allegations by the union that the nurse should retain her employment. The court noted: "The Board therefore failed to adequately explain the basis of its disagreement with the ALJ ... and took action against the Company without the support of substantial evidence in the record."

This case serves as another reminder that **consistency is key** with respect to rules enforcement in the workplace – particularly when defending against allegations of unlawful terminations.