

## FMLA: Nurse's Self-Diagnosis Is Not Sufficient.

A nurse worked for the company that provided medical and mental health services to the inmates at a state correctional facility.

Her superiors questioned her management and leadership skills and were concerned about her care-planning competence. On the other hand she believed her problems were stress, anxiety, insomnia and stress-related skin and gastrointestinal problems caused by her superiors' micro management and false accusations.

She was terminated over those performance issues and then sued for violation of her right to medical leave under the US Family and Medical Leave Act (FMLA).

***Fundamental to an employee's right to medical leave under the US Family and Medical Leave Act (FMLA) is the existence of a serious health condition.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
August 9, 2013

The US District Court for the Middle District of Pennsylvania dismissed her case.

Federal FMLA regulations set the accepted meaning of the term "serious health condition" for which an employee can be entitled to leave. To qualify, a serious health condition requires either hospitalization or ongoing outpatient treatment by a healthcare provider. The nurse never saw a physician until after she was fired.

The Court rejected her argument that she could circumvent the regulations by diagnosing and treating herself for anxiety and depression based on her training as a clinical nurse specialist and her background in cognitive behavior therapy, biofeedback and progressive relaxation.

She never had a qualifying serious health condition before her termination and thus her termination could not have been a violation of her FMLA rights, the Court concluded. Criscitello v. MHM Services, 2013 WL 4049724 (M.D. Pa., August 9, 2013).

## Discrimination: Nurse Was Treated Differently Because Of Race.

An African-American nurse was cited for numerous documentation errors with oxycodone, but his drug test was negative. He was also cited for insubordination, tardiness and failing to clock out properly on numerous occasions.

While out on medical leave he sent in a letter of resignation, then came back to work and said he had changed his mind. His supervisor refused to take him back and refused to recommend him for employment on another unit.

***The two male nurses' troubled employment records were very similar.***

***One nurse was removed from the unit but was recommended for re-hiring.***

***The minority nurse was also let go but was not recommended for another unit.***

***Race discrimination is the only plausible explanation.***

UNITED STATES DISTRICT COURT  
SOUTH CAROLINA  
August 7, 2013

The US District Court for the District of South Carolina found grounds for a race discrimination lawsuit.

Another male nurse on the same neurosurgery unit with the same supervisor was involved in incidents that raised serious doubts about his nursing competence. One incident involved a patient death for which he was found responsible. He was removed from the unit, but with a recommendation from the supervisor for re-hiring elsewhere within the institution.

The Court said although the two nurses' troubled records were very similar, they were treated very differently in one very important respect. The reason for that difference had to be presumed to be racial bias. Mitchell v. Medical Univ. Hosp., 2013 WL 4041954 (D.S.C., August 7, 2013).

## Patient Abuse: Court Rules LPN's Firing Justified.

At around 1:45 a.m. an Alzheimer's patient walked up to the nurses station and grabbed a bottle of hand sanitizer and walked off with it.

An LPN went after him to get it back. The patient would not give it back so the LPN followed him and pinched his arm. When the patient turned around and faced him the LPN chest-butted him, which nearly knocked the patient down. The LPN reportedly was laughing all the while.

An aide who witnessed the incident knew the LPN was friends with the nursing supervisor on duty, so she waited until 7:30 a.m. not that morning but the next morning to speak with a charge nurse.

***The facility's policy called for immediate reporting of any incident involving patient abuse.***

***The aide who witnessed this incident waited more than a day to report the incident to a charge nurse.***

***That fact alone, assuming the incident could be corroborated, does not mean the facility cannot terminate the LPN for misconduct.***

COMMONWEALTH COURT  
OF PENNSYLVANIA  
August 8, 2013

The Commonwealth Court of Pennsylvania ruled that the LPN had no right to object to his firing on the basis that the aide violated facility policy for immediate reporting of abuse.

The facts were fully corroborated. The resident was seen and treated by another nurse at 2:00 a.m. the same morning for a skin tear on the back of his arm.

What the LPN did clearly fit the definition of patient abuse and abuse of a patient clearly fits the definition of misconduct for which a caregiver can be fired. McMahon v. Unemployment Compensation Board, 2013 WL 4033614 (Pa. Cmwlth., August 8, 2013).