

## Nurse's Apology: Court Finds No Basis For Liability.

After a colonoscopy the patient was taken back to her room where a nursing assistant helped her on to the toilet in her bathroom and left her sitting there.

While sitting on the toilet the patient fainted unexpectedly, fell off the toilet and injured her knee.

The patient sued the hospital, claiming that the nursing assistant was negligent for leaving her on the toilet unattended. The jury thought otherwise.

The patient filed an appeal arguing that the judge was mistaken not to allow her to testify that a nurse had apologized to her and promised that the hospital would pay her medical bills from the knee injury.

The jury's verdict of no negligence was upheld by the Court of Appeals of Tennessee.

***The patient has been unable to come forward with any actual proof that it was within the scope of the nurse's duties to act as the hospital's legal representative in making statements which compromised the hospital's interests or that the hospital took ownership of her alleged statements after the fact.***

COURT OF APPEALS OF TENNESSEE  
December 21, 2012

The Court agreed that a hearsay statement by an employee theoretically can be held against an institution, but only if the statement was made by an employee who was authorized by the institution to speak on its behalf or the statement was made about a subject matter that was within the scope of the employee's duties.

The Court was not willing to assume without actual proof that the hospital would authorize a bedside nurse to act as a legal or risk-management representative. [Chapman v. Wellmont](#), 2012 WL 6651345 (Tenn. App., December 21, 2012).

## E.R.: EMT Certification, Physical Agility Tests Upheld, Court Sees No Gender Discrimination.

***The E.R. manager wanted his direct-care staff to pass a physical agility test because he was concerned about an escalation of violence in emergency rooms stemming from the fact that the State was reducing funding for inpatient mental health care, forcing many mentally ill individuals to look to hospital emergency rooms for first-line psychiatric treatment.***

***In the E.R. manager's judgment, these individuals represented a significant potential for behavioral problems in the E.R. with the potential to escalate to violence that could threaten patients' and staff safety.***

***It is not for the Court to decide whether there actually is an upward trend in the numbers of mentally-ill persons coming in to emergency rooms or whether their behavior does in fact represent a safety threat to patients and staff.***

***In a discrimination case the only question is whether the decision was motivated by a genuine intention to address a legitimate concern in a rational manner and is not a pretext for discrimination.***

UNITED STATES DISTRICT COURT  
IOWA  
December 26, 2012

While downsizing the total number of full-time-equivalent employees in the emergency department the hospital abolished ten CNAs' positions as Critical Care Techs and invited them to re-apply for seven newly created positions as Critical Care Safety Techs.

The new job classification, unlike the old position that no longer existed, required emergency medical technician (EMT) certification and successful completion of a physical agility test.

A female CNA who had worked in the E.R. and other units at the hospital more than five years sued for discrimination.

The US District Court for the Northern District of Iowa ruled the hospital was not guilty of discriminating against women.

### EMT as Traditionally Male Occupation

The CNA's lawsuit alleged the hospital's new policy favored EMTs, an historically and traditionally male occupation, over the CNA's prior role at the hospital.

The Court pointed out, to the contrary, that different statistics now show that twenty-nine to thirty-eight percent of US EMTs are women, a significant level of participation in the Court's judgment.

Further, all the males who had worked at the hospital in the CNA's prior classification who were rehired in the newly-created position had obtained EMT certifications and two females, both with EMT certifications, were hired from the outside. Both of these factors tended to negate discriminatory intent, the Court said.

Further still, the Court was satisfied that requiring EMT certification is rationally linked to improved quality of patient care in a hospital emergency department.

### Physical Agility Test

#### Did Not Discriminate Against Women

The Court refused to second-guess the E.R. manager's judgment that a physical agility test for direct-care workers in the E.R. was realistically relevant to patient and staff safety. The only question for the court in a discrimination case is whether the employer's stated rationale is so implausible as to be a pretext for discrimination. [King v. Allen Mem. Hosp.](#), 2012 WL 6705826 (N.D. Iowa, December 26, 2012).