

Discrimination: Minority Must Point To Non- Minority As Basis For Comparison.

A male Caucasian certified nursing assistant was fired for patient abuse, that is, for abruptly dropping a nursing-home patient into her chair during a transfer from her bed and then pushing her hard on the forehead when she slumped forward in the chair.

He was reported to the state department of health, but the department's investigation concluded there were no grounds to charge him with abuse.

He sued for gender discrimination.

The employee bears the burden of proof that the employer's disciplinary action was merely a pretext for illegal discrimination.

UNITED STATES DISTRICT COURT
ARIZONA
August 10, 2006

The US District Court for the District of Arizona agreed that a male CNA would be considered a minority for purposes of discrimination law and further agreed in general terms that differential discipline of a male caregiver compared to one or more female caregivers amounts to illegal gender discrimination.

That being said, the court found the CNA's evidence of discrimination inconclusive. Merely saying that a female CNA was accused of abuse but not fired is not enough. The alleged victim must show that the detailed particulars of the non-minority's infraction were identical to his in all essential respects, or there is no valid basis for comparison. **Harwood v. Avalon Care Center**, 2006 WL 2345906 (D. Ariz., August 10, 2006).