

## Racial Bias: Caucasian Nurse's Discrimination Case Dismissed.

The US Court of Appeals for the Fifth Circuit accepted the underlying premise that a Caucasian employee has the right to complain and even to file suit over racial discrimination by an African-American supervisor, if there are facts to support the case, which in this case there were not.

**The Caucasian staff nurse claimed the facility's African-American director of nursing discriminated against her based on her race.**

**The evidence does not show that race was a factor in the nurse's termination.**

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
February 9, 2012

There were three separate incidents that preceded the nurse's termination: She charted non-existent physician's orders that a resident needed to be sent to the hospital, gave one resident's medication to another resident and injured a patient using substandard technique in removing a urinary catheter.

The Court was willing to defer to the nurse's employer's judgment that these incidents added up to legitimate justification for a nurse's termination.

The falsified documentation placed in a resident's chart was reported to the director of nursing by a Caucasian nurse practitioner who was very upset about it. The medication-error incident was reported to the director of nursing by a Caucasian staff nurse co-worker.

The director of nursing, who was African-American, had the final say but the fact that other Caucasian employees had serious issues with the job performance of the nurse in question and wanted something done tended to negate the argument that race was a factor, the Court said. **McVile v. Inter-Community Healthcare, 2012 WL 407012 (5th Cir., February 9, 2012).**

## Disability Discrimination: E.R. Nurse Restricted From Essential Job Functions, Case Dismissed.

**To have a valid case of disability discrimination based on the employer's failure to offer reasonable accommodation, the employee must prove:**

**The employee had a disability as disability is defined for purposes of the Americans With Disabilities Act;**

**The employer knew about the disability;**

**The employee could perform the essential functions of the employee's position with reasonable accommodation; and**

**The employer refused to offer reasonable accommodation.**

**The hospital in this case does not dispute that the nurse was disabled.**

**The question is whether the nurse was a qualified individual with a disability.**

**That is, could the nurse perform the essential functions of the job, functions which bear more than a marginal relationship to the job in question? Would any reasonable accommodation by her employer enable her to perform those functions?**

**The answer to these questions is "No." This is not a case of disability discrimination.**

UNITED STATES DISTRICT COURT  
VIRGINIA  
February 1, 2012

A hospital E.R. RN was restricted for a period of six weeks by her personal physician from lifting more than 10 lbs. with her left arm.

Her supervisors agreed to accommodate her restriction and allowed her to continue to work.

Then the nurse provided new information, a physical-capacities assessment form filled out by her physician which increased the level of restriction to "no lifting/carrying 0-20 lbs., no pushing/pulling and no stretching or working above shoulders."

Her supervisors were not able to accommodate these new restrictions. They removed the nurse from the schedule but informed her by phone she could return to work once her physician lifted her restrictions. Her lawyer sent a letter stating her restrictions had been lifted but the hospital never heard from the nurse herself again despite two letters sent to her informing her she could return to work.

**Nurse Was Not A**

**Qualified Individual With A Disability**

The US District Court for the Eastern District of Virginia agreed with the nurse she was disabled but nevertheless dismissed her case. The Court agreed with the hospital that during the relevant time period she was not a qualified individual with a disability.

The Court endorsed the hospital's job description for a clinical nurse in the E.R. An E.R. nurse must be able to lift heavy equipment, push and pull stretchers and wheelchairs, support patients who are weak or unsteady, assist patients with walking, standing or sitting, physically assist patients to chairs, wheelchairs, stretchers, exam tables and bathrooms, lift patients to chairs and exam tables, roll patients on stretchers, use equipment located above shoulder level, perform CPR, perform procedures on patients who might resist and move equipment and furniture.

All of the above were essential functions of the nurse's position, which she was unable to fulfill based on the medical documentation provided by her physician. **Wulff v. Sentara Healthcare, 2012 WL 320518 (E.D. Va., February 1, 2012).**