

## Disability Discrimination Nurse

The U.S. Circuit Court of Appeals for the Sixth Circuit recently upheld the dismissal of a nurse's disability discrimination lawsuit.

The nurse's physician certified she could work eight-hour shifts in pediatrics but could not work twelve-hour shifts in pediatrics because of recurrent tendinitis in multiple joints, chondromalacia, subpatellar crepitus and pain in both knees, fasciitis in both feet and low back radiculopathy. She also had a gastric ulcer which contraindicated taking aspirin or acetaminophen for pain, in her doctor's opinion.

The hospital's pediatrics floor switched from eight-hour to twelve-hour shift scheduling for all nurses.

The hospital offered the nurse a favorable recommendation if she wished to apply at another hospital with eight-hour shift staffing in pediatrics and the option to transfer to another unit at the same hospital with eight-hour shift staffing. She refused the hospital's assistance, quit and sued for disability discrimination.

The court ruled her condition was not a legal disability for a pediatric nurse. Even so, it would not be a reasonable accommodation to have to schedule one nurse for eight hours when every other nurse worked twelve. And her physician would not clear her for work with adult patients, due to significant lifting requirements. In the court's view that meant the nurse was not a qualified individual with a disability relative to work with non-pediatric patients. **Doren v. Battle Creek Health System**, 187 F. 3d 595 (6th Cir., 1999).

## Disability Discrimination Nurse

The U.S. District Court for the Eastern District of Pennsylvania ruled a hospital fully complied with its legal duties as an employer under the Americans With Disabilities Act (ADA) and that a nurse's aide had no grounds to sue for disability discrimination.

The aide worked at the hospital for twenty-two years before developing a Bartholin's cyst. As it would turn out, the situation never got to the point where the court would have to rule whether that condition is a legally-defined disability or what accommodation would be reasonable.

The unit nursing supervisor asked the aide for medical documentation when she first claimed she could not lift or pull heavy patients. The aide got a short note from her gynecologist. The supervisor gave the aide a physical capacities evaluation form for the gynecologist to complete, but he refused, apparently believing she was not unable to work.

The supervisor sent her to the hospital's occupational therapy department, where a nurse practitioner refused to document her disability, saying she would not complete the form because the aide was under a physician's care. The supervisor told the aide to go to her family physician, but he also refused to complete the form.

When the aide flatly refused to try to lift a particular patient without assistance, the supervisor on duty told her she had to perform her assignments as usual or be sent home. She never returned after a three-day suspension.

The court ruled the hospital fulfilled its duty to participate in the interactive process required of employers by the ADA, and the aide could not sue. **Tatum v. Hospital of the University of Pennsylvania**, 57 F. Supp. 2d 145 (E.D. Pa., 1999).