

Altered Records: Nurse's Discrimination Case Dismissed.

A nurse was one of two liver transplant program coordinators at the hospital. Her responsibilities included monitoring and maintaining patients' records and entering their health information into the database of the organ sharing network.

During audits of the program by the network, requests were made by the network for documentation to back up data entries made by the nurse.

The network was suspicious of certain lab results entered by the nurse and needed to see actual documentation from the charts. Further investigation revealed that "cut and paste" records were placed in ten patients' charts to satisfy the auditors.

The nurse was terminated and was reported to the state board of nursing.

The nurse sued for discrimination and violation of the Constitutional rights by her employer, a state agency.

Entering incorrect data into the transplant network database and falsifying documentation to back up the incorrect data were legitimate non-discriminatory reasons for the nurse's termination.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
June 18, 2013

The US Court of Appeals for the Eighth Circuit (Arkansas) dismissed her case.

The nurse pointed to several male nurses who were not terminated for misconduct. However, they were not valid bases for comparison because their positions were not the same and their misconduct did not threaten patients' eligibility for liver transplants or bring into question the hospital's program's continued participation in the transplant network. **Floyd-Gimon v. Univ. of Ark.**, ___ F. 3d ___, 2013 WL 2988704 (8th Cir., June 18, 2013).

Sexual Contact With Patient: Discrimination Case Dismissed.

A licensed practical nurse was terminated from her job in a long term care facility after several of her co-workers witnessed an episode of inappropriate mutual sexual touching and fondling involving an eighty year-old male dementia patient.

She sued the facility for religious, gender and disability discrimination.

The nurse testified she had felt ostracized by her co-workers, the ones who reported her inappropriate interaction with the patient, because of her Pentecostal religious beliefs and her cleft palate.

However, subjective speculation that one is unpopular because of one's religion or disability is not direct evidence of employment discrimination.

UNITED STATES COURT OF APPEALS
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The US Court of Appeals for the Eighth Circuit (Arkansas) dismissed her case.

Irrelevant that Patient Initiated Contact

Even if the elderly dementia patient was the one who initiated the inappropriate contact, that was no excuse for the nurse to respond in kind. Sexual contact with a patient is a legitimate, non-discriminatory reason for disciplining or terminating a nurse's employment.

Other employees had had sexual contact initiated by a patient, but there was no evidence that anyone else ever responded in kind like this nurse and went ahead with an inappropriate interaction, that is, there was no evidence that this nurse's case was handled in a discriminatory manner. **E Vance v. Trumann Health**, ___ F. 3d ___, 2013 WL 2988632 (8th Cir., June 18, 2013).

Freedom Of Religion: Nurse's Discrimination Case Dismissed.

When she learned that a co-worker whom she considered a personal friend was a lesbian, a charge nurse put a pamphlet in the co-worker's locker entitled, "How Should Christians Respond to 'Gay' Marriage?"

The co-worker was offended and angrily threw the pamphlet in the trash.

The pamphlet was followed by at least one email from the nurse to her co-worker that she was going to hell for living in sin.

The co-worker complained to her manager. The nurse was reprimanded and transferred to a staff nurse position in another unit away from the co-worker. The transfer included demotion to a non-supervisory role and reduction of pay.

The nurse sued the hospital for religious discrimination.

The hospital has a policy forbidding employees from distributing printed materials or using electronic media to transmit messages that are offensive, harassing or discriminatory toward other employees.

UNITED STATES DISTRICT COURT
GEORGIA
June 10, 2013

The US District Court for the Middle District of Georgia dismissed the case.

The nurse had no evidence that any non-Christian employee had ever been treated more favorably than her after violating the hospital's policy against communications that were offensive, harassing or discriminatory toward other employees.

The only prior terminations for violation of the policy were two employees who were fired for exchanging racist emails about African Americans, Hispanics and Muslims, which was no proof of the hospital's policy was not being applied evenhandedly as to religious messages. **Hall v. Tift Co. Hosp.**, 2013 WL 2484089 (M.D. Ga., June 10, 2013).