

MS: Hospital Provided Reasonable Accommodation, Nurse's Case Dismissed.

A registered nurse was diagnosed with multiple sclerosis in 2002.

The hospital hired her in 2008 as a case manager who floated to different units as needed. In 2009 she was assigned as a case manager in the transplant unit. Then in 2010 she was assigned as a case manager in the medical/teaching unit.

She soon asked to be transferred back to the transplant unit because she did not like working with a particular person in the medical/teaching unit.

A few months later she handed in a written request for accommodation for the fatigue caused by her MS.

That request came with a letter from her doctor recommending no more than forty hours of work per week with an occasional nine-hour day. The hospital agreed the nurse would not be required to work more than forty hours per week.

The nurse's doctor never recommended transfer to another unit as an accommodation to her disability.

A few months after that a nurse case manager position in the orthopedics unit was filled with an individual recently hired from outside the hospital. The nurse in question was not allowed to transfer to orthopedics to take the position.

The nurse reiterated her request for a transfer out of her unit. She also asked for another person to work with her to alleviate her work load, and was told the hospital was hiring someone for that purpose.

The nurse was allowed to take medical leave at her doctor's recommendation and afterward returned to the hospital in her original floater position. The nurse eventually resigned after she heard about an opening with another employer.

No Disability Discrimination

The US District Court for the Southern District of Texas saw no disability discrimination. A disabled employee is not allowed to choose a particular accommodation from a list of viable alternatives, specifically a different job, if the employee can do his or her present job with reasonable accommodation provided by the employer. **Pomerantz v. Houston Meth. Hosp.**, 2014 WL 5090278 (S.D. Tex., October 9, 2014).

The nurse's disability discrimination lawsuit focused on the hospital's refusal to allow her to transfer to the orthopedics unit.

The case manager there was promoted and an individual recently hired from outside took over the case manager position.

That does not amount to illegal failure to provide reasonable accommodation to the nurse's disability.

The Americans With Disabilities Act (ADA) does not provide a disabled employee with the unqualified right to choose a preferred accommodation from viable alternatives or to choose what job assignment the employee receives.

The ADA does not require affirmative action in favor of individuals with disabilities, in the sense of requiring disabled persons be given priority in hiring or reassignment over qualified persons who are not disabled.

The nurse's doctor never identified the orthopedics position as a necessary accommodation. Her doctor did identify other accommodations to allow her to do her existing job, which the hospital provided.

UNITED STATES DISTRICT COURT
TEXAS

October 9, 2014

Disorderly Conduct: Board Can Require Mental Exam.

An LPN crashed her car at a high rate of speed into a sign in a grocery store parking lot, then went inside the store and began screaming hysterically at an employee in the store pharmacy.

When the police arrived they found her talking incoherently. The LPN refused to go along with a field sobriety test and was taken to jail in handcuffs.

After she pleaded no contest to disorderly conduct the LPN was put on probation and was ordered to undergo an evaluation by a court-approved behavioral-health specialist. The evaluation found no basis to require substance abuse treatment.

However, the State Board of Nursing suspended the LPN's license, with reinstatement possible once she passed a mental health evaluation of her fitness to practice nursing, the evaluation to take place at her own expense.

Financial considerations are not a valid reason for a nurse to refuse a mental health evaluation ordered by the Board to assess the nurse's fitness to practice.

The prior court-ordered evaluation is not a sufficient substitute.

COURT OF APPEALS OF OHIO
September 18, 2014

The Court of Appeals of Ohio ruled it is within the Board's discretion to condition a nurse's license restoration on a mental health evaluation to assess the nurse's fitness to practice, if there is reason to question that issue.

The nurse's financial situation is not a circumstance beyond the nurse's control that will excuse a nurse from this requirement. The court-ordered exam in connection with her probation was not conclusive as to her psychological fitness to practice as a nurse. **Weigel v. Board of Nursing**, 2014 WL 4638832 (Ohio App., September 18, 2014).