

Report To Board: Emotional Distress Lawsuit Upheld.

An RN was terminated from her employment of sixteen years in the hospital's labor and delivery department after she successfully performed an internal bimanual uterine massage on a patient who was experiencing severe post-partum hemorrhaging.

The grounds given to the RN for her termination were that there was no physician's order for her to perform the procedure and that it was outside the scope of nursing practice.

After her termination the RN was reported to the state Board of Nursing. The Board, however, ruled in her favor.

Other nurses, against whom the hospital had never taken any disciplinary action, had performed the same procedure for which this nurse was reported to the Board of Nursing.

The physician had trained her in the procedure and expected her to perform the procedure on his patients.

The Board ruled that an appropriately trained nurse performing the procedure in an emergency is not acting outside the scope of nursing practice.

COURT OF APPEALS OF MISSISSIPPI
March 10, 2015

The Court of Appeals of Mississippi ruled the nurse, who was working without the benefit of an employment contract or union collective bargaining agreement, had no legal right to contest her termination.

However, she did have the right to sue for intentional infliction of emotional distress over the hospital's decision to single her out from other nurses who had done the same thing without consequences for an unjustified complaint to the Board of Nursing. **Petty v. Baptist**, __ So. 3d __, 2015 WL 1015781 (Miss. App., March 10, 2015).

Nurse/Patient Race-Matching: Court Sees Race Discrimination.

The patient, an elderly Hispanic female, was admitted to the hospital for injuries sustained in an attack by an African-American male who threw her to the ground while taking her purse.

The patient would "freak out," shaking, crying, even becoming incontinent of urine when a person of color tried to provide care.

The Court acknowledged the patient's circumstances but ruled they were irrelevant to the hospital's liability for removing an African-American LPN from her care based on race.

The LPN's supervisors had no animosity toward her because of her race, but that is also irrelevant.

Job assignments on the basis of race amount to illegal discrimination.

Any decision by an employer to assign or not to assign an employee on the basis of the employee's race to service a particular customer is discriminatory, even with no racial animosity or diminution of salary or benefits.

When done intentionally it is irrelevant whether race-matching is based on an express employer policy, an implicit way of doing things or no policy at all.

UNITED STATES DISTRICT COURT
FLORIDA
March 2, 2015

An elderly female Hispanic patient was admitted to the hospital's acute rehab unit from the E.R. after being mugged on the street by an African-American male.

**No African-Americans
No Dark-Skinned Persons
To Provide Care**

A sign was posted at the door to the patient's room on the acute rehab unit directing all hospital personnel to report to the nurses station before entering the room.

At the nurses station they would be informed that all African-Americans and other dark-skinned persons were not to provide nursing or therapy services or even deliver her meals.

More than a week into the patient's stay an African-American LPN was floated to the acute rehab unit. By all accounts the LPN is a well respected hospital employee whose nursing competence has never been called into question.

The charge nurse assigned the African-American LPN to care for the patient. The LPN went to the room and began her assessment. The charge nurse soon came in with a male Caucasian nurse and informed the patient that the LPN would be taking over from the male Caucasian nurse.

It went well at first, until the patient or a family member asked that the African-American LPN not care for the patient further. The charge nurse replaced her.

The LPN called the house supervisor to protest but was sent to a different unit.

The LPN later complained to hospital management, but the decision to exclude her from this patient's care was ratified all the way to the top.

The African-American LPN and a dark-skinned tech of Indian descent were the only staff members affected.

Court Finds Discrimination

The US District Court for the Middle District of Florida upheld the LPN's right to sue for race discrimination.

Any decision based on race to assign or not to assign a particular employee to a particular patient is a violation of the US Civil Rights Act, even if there is no racial animosity behind the decision or any loss of salary or benefits by the affected individual. **Dysart v. Palms**, __ F. Supp. 3d __, 2015 WL 864881 (W.D. Fla., March 2, 2015).