

Nurse Reassigned: Court Sees No Discrimination.

A patient on the neurosurgical ICU allegedly threatened to kill his nurse. The patient claimed the nurse slapped him, physically and verbally abused him, cursed at him, broke his laptop computer and rummaged through his personal items.

Pursuant to hospital policy the nurse was suspended without pay pending an investigation. The investigation found no basis for the patient's accusations, so the nurse was reinstated as an employee of the institution with full back-pay for the two weeks she lost.

She was told, however, she was going to be reassigned to another unit while the patient in question remained on the neurosurgical ICU. The new assignment had the same job title, hours, pay and benefits as her previous position.

The nurse never came back to work. Instead, she resigned and filed a lawsuit alleging she was discriminated against because of her race.

The nurse would have to show a pattern of non-minority nurses accused of abusing a patient being treated differently, that is, more favorably than she was treated.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
December 14, 2009

The US Court of Appeals for the Fifth Circuit upheld the lower Federal court's decision to dismiss her race and gender discrimination lawsuit.

The nurse admitted it is legitimate for a healthcare facility to suspend a nurse accused of abusing a patient pending an investigation.

There was no proof that non-minority nurses faced with the same allegations of abuse were treated differently that she was. She was not treated differently than non-minorities under the same circumstances. McGarry v. Univ. of Miss. Med. Ctr., 2009 WL 4823013 (5th Cir., December 14, 2009).