

## Post-Mortem Care: Nurse Fired Over Handling Of Miscarriage Wins Discrimination Lawsuit.

***At the time the hospital had no policy on what to do with a miscarried fetus under twenty-four weeks.***

***When any employer terminates an employee for alleged misconduct in a subject area where the employer has no express policy, the employer can be left facing a gaping legal void if the former employee turns around and sues for discrimination.***

***Not having a defined policy to follow can be especially problematic if it was a senior, highly paid person with a good work record who was approaching retirement age who was terminated for alleged misconduct and replaced by someone only minimally qualified and half her age.***

***To prove age discrimination the victim must be at least 40 years of age, be qualified for the position, suffer adverse employment action and be replaced by a younger person.***

***The employer can offer the court a legitimate, non-discriminatory explanation, but the employee can still play upon suspicions it is only a cover-up for discriminatory intent.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
January 23, 2008

A registered nurse had worked as a nurse at the hospital for twenty-five years. Adding those years to the twelve years she worked there before getting her nursing degree gave her thirty-seven years seniority.

Another labor and delivery nurse called her into a patient's room while the patient was on the commode. The nurse in question noticed blood clots in the bowl as she assisted the patient to stand up.

The nurse called the doctor. The doctor told her not to flush as it was necessary to preserve the contents.

The doctor came and took a look and told her to remove the contents with a forceps and place them in a formalin container. She did so and then informed him that all of the products of conception, a whole fetus and placenta, were accounted for.

The doctor's rationale was that he wanted to test the remains for chromosomal abnormalities.

The nurse stayed with the patient in her room until she was relieved by another nurse at the end of her shift.

### **Nurse Fired for Misconduct**

A few days later the nurse was given formal written notice she had been terminated over this incident.

The best explanation she could obtain was she should have started an IV and Pitocin for the patient, even though there was no doctor's order for either and a doctor's order is normally required.

The nurse sued for age discrimination. A jury in the US District Court for the Eastern District of Pennsylvania awarded her \$216,800 from the hospital.

Two physicians testified there was nothing inappropriate about the manner in which she handled the remains.

It was legally problematic for the hospital, not for her, that there was no particular policy on the books for what she was supposed to do in this situation. Thus she could not have and did not violate hospital policy. ***Scanlon v. Jeanes Hosp., 2008 WL 191169 (E.D. Pa., January 23, 2008).***