# Pre-Employment Physical Exam: Disability Lawsuit Thrown Out.

After a shakeup in ownership a nursing facility was in a hurry to fill hundreds of positions quickly with licensed and non-licensed patient-care staff and others.

An expedited hiring process was set up which involved applicants coming in, filling out applications, being interviewed and then being given an on-site medical exam.

The medical exam included a quick physical checkup by a nurse practitioner and a urine sample given in a restroom.

The urine sample was tested for illicit substances and certain prescription drugs. If anything questionable was found the person was contacted for an explanation.

After a complaint was lodged, the US Equal Employment Opportunity Commission sued the facility on behalf of twenty-two individuals who were not hired.

The US District Court for the Western District of Pennsylvania, in a forty-seven page opinion, ruled that none of the individuals had grounds to sue. We have space here only to touch on some of the highlights of the Court's ruling.

**Drug Screening Is Legal**

While most aspects of this employer's pre-employment medical exam were not legal, the pre-employment urine screen for illicit drugs and drugs of abuse was legal.

Certain employees' drug screens revealed methadone, oxycodone and Percocet. None of them could prove they had a prescription. THC metabolites in one person's urine required no further inquiry.

A successfully rehabilitated substance abuser has rights as a disabled person, but active drug use necessarily forecloses consideration as successfully rehabilitated.

**Diabetes**

One of the non-hired persons is diabetic. Diabetes, the Court explained, is just one example of a medical condition that can be but is not necessarily a disability. It is a disability only if the condition substantially limits a major life activity of the specific individual in question.

In this case the non-hired diabetic was not able to prove that her diabetes was a disability for her. Not being able to prove that she herself was disabled, she had no right to sue. **EEOC v. Grane, 2015 WL 5439052 (W.D. Penna., September 15, 2015).**

***To combat disability discrimination the Americans With Disabilities Act (ADA) prohibits employers from requiring a medical exam of a prospective employee before an offer of employment has been extended.***

***Before being offered employment an applicant cannot be examined medically or asked to answer questions about current health or health history.***

***Nevertheless, the ADA expressly defines a pre-employment drug screen for illicit drugs or drugs of abuse as legitimate.***

***Even though this facility's practice was illegal, none of these persons who were not hired have the right to sue for disability discrimination.***

***To sue for disability discrimination over an illegal pre-employment medical exam, the alleged victim must show that he or she actually has a legally recognized disability.***

***Further, it must be proven that the existence of the disability was revealed to the prospective employer by the illegal medical exam.***

***And further, it must be proven that the disability was the reason the alleged victim was not hired.***

UNITED STATES DISTRICT COURT
PENNSYLVANIA
September 15, 2015

# Violence Threat: CNA's Firing Upheld.

The charge nurse asked a CNA to send out a test message to check that the other CNAs' pagers were working.

Another CNA, when she got the message, went to the nurses station to ask what it was about. Then as she walked away from the nurses station she made an offensive gesture toward the CNA who had sent the message. That sparked a verbal confrontation.

The charge nurse corrected them for arguing at the nurses station. At that point the first CNA challenged the other CNA to, "Take it outside."

Both CNAs were suspended, and then only the CNA who said, "Take it outside," was fired.

***Regardless of who instigated a verbal confrontation, any conduct that can be interpreted as a threat to escalate a non-violent situation to violence is misconduct and grounds for a healthcare employee's dismissal for just cause.***

COURT OF APPEALS OF TENNESSEE
September 8, 2015

The Court of Appeals of Tennessee ruled the CNA was fired for just cause.

The Court discounted the fired CNA's testimony that she was simply complying with the charge nurse's directive for the two of them to continue peacefully to discuss and work out their personal differences somewhere else and not right in front of the nurses station.

Instead, it was reasonable to interpret what the fired CNA said as a physical challenge and a threat of violence. The other CNA may have been the instigator, but her conduct was never physically threatening.

If she had been physically threatened, the now-fired CNA might have had a legitimate reason to respond in kind, but that was not what happened, the Court said. **Sanders v. Commissioner, 2015 WL 5242924 (Tenn. App., September 8, 2015).**