

## Race Discrimination: Court Sees Grounds For Nurse's Lawsuit.

An African-American nurse was terminated after a number of deficiencies were found in her care of patients in the hospital's ICU on a particular twelve-hour day shift.

The problems included letting an IV bag run empty, twice failing to administer insulin, failing to record vital signs, failing to put a blood pressure cuff on properly, letting an immobile patient lie contorted with her face against the bed rails, failing to check in for five hours while the family was in a patient's room and failing to clean a patient who had soiled himself.

The terminated African-American nurse sued for race discrimination. The US Court of Appeals for the District of Columbia Circuit saw grounds for her case.

### Differential Discipline

#### Non-Minority Comparators

The minority nurse pointed out six Caucasian nurses who were merely counseled for their performance issues but were not terminated.

The Court saw them as comparable to the African-American nurse in all relevant respects, except that they were not fired.

The other nurses had the very same clinical nurse job title and job responsibilities as the African-American nurse and worked on the very same ICU at the same time the African-American nurse worked there. The nurses were all supervised and evaluated by the same superiors.

#### Offenses of Comparable Seriousness

None of the six were ever accused of doing or neglecting the exact same things as the African-American nurse.

However, a nursing supervisor had to admit in her testimony that all of the six had been guilty of errors or omissions which could have been classified as gross misconduct, grounds for termination, for which they were only counseled and allowed to keep their jobs.

According to the Court, non-minority employees disciplined less harshly who are held up for comparison do not have to have committed the exact same offenses as the minority, only offenses of comparable seriousness, to be valid comparisons for reference in a discrimination case. Wheeler v. Georgetown, \_\_ F. 3d \_\_, 2016 WL 556705 (D.C. Cir., February 12, 2016).

***When a minority employee has been subjected to adverse employment action, like being terminated, the employer has to be able to show a legitimate, non-discriminatory justification.***

***Even if the employer can show grounds for adverse employment action, like a history of incompetence, insubordination or misconduct, the minority employee can still present evidence to show that the employer's alleged grounds are only a pretext for discrimination.***

***One way for the minority employee to show pretext is to point out non-minority employees who are comparable in all relevant respects who have committed offenses of comparable seriousness but were not disciplined at all or were disciplined less harshly than the minority employee.***

***The minority nurse pointed for comparison to six non-minority nurses who worked with her on the same ICU, had the same title and responsibilities, were evaluated by the same supervisors, committed errors and omissions which seriously compromised or could have compromised patient safety and were only counseled but not fired.***

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT  
February 12, 2016

## Race Discrimination: Court Dismisses Nurse's Lawsuit.

A resident told her CNA she had been raped by the unit manager and a physician. The CNA told the p.m. charge nurse, who laughed it off and did nothing.

In shift-change report the p.m. charge nurse passed along to the night charge nurse what the CNA said the resident had said. The night charge nurse checked on the patient, but did nothing further.

The next a.m. the day nurse read the p.m. charge nurse's chart note and immediately notified the facility director and began to spearhead a thorough investigation.

The p.m. charge nurse, an African-American, was fired. The night charge nurse, a Caucasian, was not.

***The Caucasian night nurse did not commit as serious an offense as the African-American p.m. nurse.***

UNITED STATES DISTRICT COURT  
ALABAMA  
February 11, 2016

The US District Court for the Northern District of Alabama dismissed the African-American p.m. charge nurse's race discrimination lawsuit.

Harsher discipline of a minority employee compared to a non-minority for an offense of comparable seriousness is discriminatory and grounds for a lawsuit, even if the punishment fit the crime.

The Court pointed out that the resident's allegation of rape was first made on the p.m. charge nurse's unit, during the p.m. charge nurse's shift and while the p.m. charge nurse was the patient's nurse.

The night charge nurse only learned of it later by way of nursing shift-change report, and actually went to the resident and performed a physical assessment for external signs of an assault, albeit without reporting the incident up the chain of command as she should have.

The two nurses were not guilty of comparable offenses. The fired nurse was not a victim of discrimination. Thornton v. Birmingham, 2016 WL 540805 (N.D. Ala., February 11, 2016).