

# Race Discrimination: Courts Finds Serious Violations Of Patient-Care Standards, Not Race Discrimination, Upholds Nurse's Firing.

The US District Court for the Northern District of Ohio reiterated the familiar three-part test the courts use to look for circumstantial evidence of race discrimination in employment cases:

Is the employee a minority group member?

Was the minority employee treated adversely by an employment decision-maker?

Was the minority employee treated differently than similar non-minorities?

The first two prongs of the test were simple in this case. The nurse was African-American and the hospital fired her from her staff position in the ICU after thirteen-years on the job.

On the third prong of the test, however, the court ruled the African-American nurse failed to show she was treated differently than any similar non-minority nurse.

That is, for infractions of comparable seriousness there was no non-minority nurse at the hospital who was ever treated less harshly than this nurse. For that reason the court had to dismiss the minority nurse's discrimination case.

## **The Hospital's Disciplinary Policies**

The hospital had a complex procedure for assigning numerical points to a nurse's misconduct. A more serious violation of patient-care standards meant more points.

For example, medication errors were assigned points based on the type of drug, drug dosage, whether or not the nurse caught the error and how long it took, and the medical intervention required to correct the effect of the error on the patient.

The points for multiple errors discovered at the same time could be added up by a nursing supervisor to reach a higher point total warranting more serious disciplinary action.

There were five levels of disciplinary response, based on the total points for a particular incident: coaching, written warning, first suspension, second suspension and discharge.

***When a minority-group member sues for race discrimination, the court looks at how he or she was dealt with compared to non-minorities who were the same in all respects.***

***There must be non-minorities available for comparison guilty of the same misconduct who were evaluated by the same standards but were not judged as harshly.***

***The minority group member must be able to show there were no mitigating circumstances for the non-minorities' conduct that explain why they were treated less harshly.***

***No ICU nurse at the hospital had ever failed to switch on the cardiac alarms, then back-charted that the alarms were on hours after the patient was already in the morgue.***

***A white nurse had put a telemetry strip in the wrong patient's chart, but he caught his mistake and told the supervisor right away.***

***She claimed a white nurse had falsified a chart, but that was never proven and was only hearsay and was unacceptable as evidence.***

UNITED STATES DISTRICT COURT,  
OHIO, 2000.

## **First Suspension**

The nurse in question was suspended for failing to respond to a dangerously high potassium level in an ICU patient with kidney dysfunction, which another nurse discovered after he was transferred to the oncology unit, and for failing to follow up on a PTT lab test order.

She did not grieve her first suspension through the union or file discrimination charges with the Equal Employment Opportunity Commission. The court ruled this meant the nurse had no right to argue later that non-minorities were not disciplined for not noting patients' potassium levels. In her race discrimination lawsuit this particular point was moot.

## **Second Suspension**

The nurse was suspended again for failing to switch on a cardiac monitor in the ICU. The patient arrested and died. Then she back-charted hourly alarm checks for times of the day when the patient was already in the morgue.

She grieved this suspension through her union but the suspension was upheld.

## **Discharge**

The nurse was fired for mixing up two patients' cardiac telemetry strips, putting them in the wrong charts and not catching her error. One showed ventricular tachycardia that demanded immediate attention from the physician, who was not called.

She grieved but it was upheld.

## **Discrimination Lawsuit**

It was the minority nurse's responsibility to come forward in court with a comparable basis of comparison to show she had been treated more harshly than similar non-minorities, or lose her discrimination lawsuit, the court ruled.

After reviewing all the evidence, the court's judgment was that no misconduct of comparable severity by a non-minority nurse could be found at the hospital for comparison. **Beene v. St. Vincent Mercy Medical Center**, 111 F. Supp. 2d 931 (N.D. Ohio, 2000).