

Racial Bias: Nurses Did Not Discriminate, Minority Monitor Tech's Case Dismissed.

The US Court of Appeals for the Seventh Circuit (Illinois) has upheld a ruling we reported in June 2013. See *Discrimination: Nurse Not Basis For Comparison In Tech's Case*, Legal Eagle Eye Newsletter for the Nursing Profession (21)6, June 2013 p.4.

A minority cardiac monitor tech resigned from her position in the hospital's intermediate care unit and then sued her former employer for race discrimination in the form of a hostile work environment allegedly created by the nurses on the unit where she had worked.

Her job required her to keep patients' leads attached, to watch the monitors and to report any significant changes to the patient's assigned nurse immediately. The tech was also expected to print a strip for each patient every four hours and give it to the nurse.

The tech became the target of complaints that she was not keeping the leads connected, was not watching the monitors and was not printing the four-hourly strips.

The tech believed the nurses were deliberately lying about her job performance. She accused the nurses of failing to do their own jobs,

that is, she thought the nurses should reattach their patients' leads themselves when needed.

A non-minority male nurse angrily confronted the tech about these issues. A shouting match resulted and the nurse may have made physical contact.

Both the nurse and the tech were formally reprimanded for unprofessional conduct. However, the tech alleged in her lawsuit that he should have been fired.

Court Sees No Evidence of Racial Bias

The telling point for the US Court of Appeals in its recent ruling was that the nurses' conduct toward the tech may have been unprofessional, unkind or overly aggressive, but there was no evidence that it was motivated by racial bias, apart from the nurses' frustration with the fully substantiated deficits they had to deal with with the tech's performance on the job.

A racially hostile work environment can be the legal basis for a discrimination lawsuit, but the victim has to show that race was the motivating factor, usually through verbal remarks or physical actions with overt racial overtones. **Lockhart v. St. Bernard Hosp.**, __ Fed. Appx. __, 2013 WL 5878723 (7th Cir., November 4, 2013).

Medical Confidentiality: Nurse Did Not Commit HIPAA Violations, Nurse's Firing Not Justified.

An LPN was fired from her position in the hospital's ob/gyn department for accessing the medical records of four elderly men to whose care she was never assigned and for accessing her own medical records from the ob/gyn department.

The hospital tried to justify firing her by pointing to the US Health Insurance Portability and Accountability Act (HIPAA) which now sets national Federal standards for confidentiality of patients' medical records.

Hospitals and other healthcare facilities can face substantial legal penalties and civil lawsuits for violations by their employees of their patients' right to medical confidentiality. Consequently, the courts now recognize such violations by employees as grounds for termination for serious misconduct.

Regardless of the hospital's policy, it is not employment misconduct justifying termination for an employee to access his or her own medical treatment records at the facility where the employee works.

Although HIPAA requires a signed HIPAA-compliant written release to access medical records, an employee does not have to sign one just to look at his or her own medical chart.

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In this case, however, the Court of Appeals of Minnesota ruled the LPN in question was not guilty of HIPAA violations serious enough to justify her termination.

The evidence revealed that her accessing the charts of four elderly male patients who obviously had nothing to do with the ob/gyn department were only momentary lapses which happened to show up on a routine random audit. The LPN apparently opened each of the charts by mistake and then promptly logged off after only a brief view.

The Court also said that an employee does not violate his or her own right to medical confidentiality by accessing his or her own medical chart, with or without having signed a HIPAA-compliant release. **Andrew v. Range Reg. Hlth. Svcs.**, 2013 WL 5676992 (Minn. App., October 21, 2013).