

## Restraints: Nurse Fired For Violation Of Facility's Policies.

A fifty-nine year-old registered nurse who had worked in the same facility for twenty-seven years was fired after she restrained a patient.

The patient's wheelchair alarm had sounded, indicating the patient was trying to get out of the wheelchair. The nurse was unable to get the patient to settle down, so she tucked a blanket around the patient's waist and tied it behind her.

The nurse claimed it was only a loose half-knot which the patient herself could untie, but the two nursing assistants who found the patient tied to her wheelchair and untied her claimed the blanket was tied tightly and securely around her waist.

The fifty-nine year-old nurse was fired more than two months after taking Family and Medical Leave Act (FMLA) leave for thyroid surgery.

After her firing the nurse sued her former employer for age discrimination, interference with her FMLA rights and retaliation for taking FMLA leave.

The US District Court for the District of Maryland dismissed all of the allegations raised in the fired nurse's lawsuit.

### No Age Discrimination

One essential element of a successful discrimination case was lacking here, proof that the alleged victim was meeting her employer's legitimate expectations.

The nurse had received numerous complaints prior to her firing, which was precipitated by the restraint incident that amounted to gross misconduct.

The nurse also failed to prove that she was replaced by someone who was younger than the legally protected forty-to-seventy year-old class of persons.

### No FMLA Interference, No Retaliation

The nurse was unable to prove that her FMLA leave had anything to do with her firing two months later right after a patient-care incident. The employer had fully advised her of her FMLA rights and had granted her leave request.

The Court pointed out that requesting FMLA leave does not give an employee immunity from the employer's legitimate expectations and disciplinary process for fear of a complaint of a FMLA violation. **Hanning v. St. Joseph's**, 2015 WL 9304538 (D. Md., December 21, 2015).

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***A physical restraint is any manual method or physical or mechanical device, material or equipment attached or adjacent to the patient's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's own body.***

***Before restraining a patient staff must check the chart for a restraint order entered by a physician, and must document the medical symptoms meriting the use of a restraint.***

***A restraint may be considered in an emergency if failure to use it is likely to endanger the safety or health of the patient or others.***

***Restraints may not be used for discipline or for the convenience of staff.***

***Two nursing assistants found the patient tied to her wheelchair with a blanket around her waist that was tied behind the wheelchair, and they untied her.***

***The patient would not have been able to remove the blanket, given her frail condition and the fact it was tied behind her.***

***The nurse who restrained the patient was fired for violation of the facility's restraint policy, considered gross misconduct.***

UNITED STATES DISTRICT COURT  
MARYLAND  
December 21, 2015

## Race-Based Patient Assignments: Nurse's Case Dismissed.

An African-American part-time nursing supervisor was told by another nursing supervisor that a Caucasian patient's family had requested that no African-Americans provide care for the patient.

Some time later, after she was denied a promotion which was given to a Caucasian whom the facility claimed was better qualified, she sued her employer.

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***Not assigning a nursing caregiver on the basis of the patient's expressed racial preference for another race is discrimination.***

***However, only the minority nurse who was not assigned to a particular patient on the basis of that patient's stated racial preference is able to complain.***

UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT  
December 11, 2015

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The US Court of Appeals for the Sixth Circuit (Michigan) dismissed her lawsuit, finding her employer did not discriminate against her.

The Court accepted it as a fact that the facility did honor the family's racial preference, even though the facility denied it.

However, the nurse as a nursing supervisor was not herself involved with this or any other patient's direct care and thus was not and could not have been assigned or not assigned to a particular patient on the basis of her race. She did not experience any adverse employment action herself based on her race, the Court ruled.

The Court also rejected the nurse's allegations as to the promotion she did not receive, the proof of discrimination being inconclusive. **Crane v. Mary Free**, \_\_ Fed. Appx. \_\_, 2015 WL 8593471 (6th Cir., December 11, 2015).