Restraints: May Not Be Used For Discipline Or Convenience, Court Rules.

When physical or chemical restraints are used for nursing home residents, they cannot be used as a disciplinary measure to influence a resident's behavior, or used merely for the convenience of staff, according to the Court of Appeals of Texas.

The court ruled that repeated, uncorrected violations of Health Care Financing Administration regulations on the use of patient restraints can result in Medicaid decertification for a long-term care facility. **Sensitive Care, Inc. vs. Texas Department of Human Services, 926 S.W. 2d 823 (Tex. App., 1996).**

Health Care Financing Administration (HCFA) regulations state clearly that residents of long-term care facilities have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

COURT OF APPEALS OF TEXAS, 1996.

***A note to librarians:**

- Volume 4 of this newsletter will contain issues numbered 13, 14 and 15, for Oct., Nov. and Dec., 1996.
- Starting with Jan., 1997 our issue numbers will correspond to the calendar months.
- Jan., 1997 will be Volume 5, Number 1.

Race-Discrimination Claims: Bias By Decision-Maker Must Be Shown, Court Rules.

Statements indicating racial bias on the part of a decision-maker in an employment setting can constitute direct evidence of racial discrimination.

For example, a statement that racial minorities are not competent in general for a particular job is a classic example of direct evidence.

With direct evidence of bias on the part of a decision-maker, discrimination is taken by the courts as proven.

In this case, statements by the head nurse on the unit, disparaging minority workers and minority patients and indicating an unwillingness work with minorities and to care for minority patients, showed the unit's head nurse was prejudiced against minorities.

The head nurse, however, was not the decision-maker who made the hiring decision challenged in this case as racially biased.

The hospital's administration readily admitted the hospital's error and paid up the wage differential at issue, satisfying the court the hospital itself was not guilty of bias toward minorities.

UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT (ALABAMA), 1996.

Three unit secretaries, African-American women, filed charges of race discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) against the hospital where they worked, because a white male newly-hired unit secretary was offered a starting hourly wage higher than their existing rate of pay.

The hospital responded to the discrimination charges by acknowledging that an error had occurred. The hospital believed it could not adjust the new-hire's pay downward, so it raised the other unit secretaries' pay to bring it into line, and offered them lump sum back payments. One of the unit secretaries did not accept this arrangement, and filed a lawsuit.

It came to light in the lawsuit that the unit's nursing manager had made statements disparaging racial minorities as workers and as patients. She admitted she had left a staff nursing position a decade earlier, rather than take direction from a minority nursing supervisor. The U.S. Court of Appeals for the Eleventh Circuit (Alabama) stated for the record this nursing unit manager was definitely prejudiced against African-American persons.

However, this nursing unit manager was only nominally in charge of her unit when the white male was hired at a higher wage rate, and was not actually making hiring decisions. In fact, she was actively managing the unit where she was about to be formally transferred. Another person had started staffing her old unit, and actually hired the white male unit secretary.

The court dismissed the discrimination lawsuit against the hospital. No direct evidence of racial bias was shown on the part of the actual decision-maker directly responsible for the differential hiring decision in question. The hospital itself had promptly acknowledged a mistake had been made, for whatever reason, and had offered to make adequate amends. **Trotter vs. Board of Trustees of the University of Alabama, 91 F. 3d 1449 (11th Cir., 1996).**