

## Whistleblower: Nurse Practitioner Has Right To Sue.

A nurse practitioner was fired after she lodged certain complaints with management at the facility where she worked.

She worked for the company with the contract to provide health services to inmates of the county jail.

One complaint was that a physician who did not work regularly in the facility refused to enter his charting into the facility's electronic records system.

The nurse practitioner and other caregivers at the facility relied on the electronic records to provide safe and effective care to their patients.

Another complaint was that the staff psychiatrist was letting new inmates go for days without mental health assessments.

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***The state's generic whistleblower law only protects an employee who reports illegal wrongdoing to a public agency.***

***However, the state's special whistleblower law for healthcare employees protects an employee who reports internally about a situation which could result in harm to patients.***

UNITED STATES DISTRICT COURT  
NEVADA  
May 9, 2014

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The US District Court for the District of Nevada ruled the fired nurse practitioner had the right to sue her former employer for retaliating against her illegally.

She did not qualify as a whistleblower under the state's more generic employee whistleblower protection law because her complaints were not voiced to an outside regulatory agency.

However, the state's special whistleblower law for healthcare employees protects healthcare employees who complain internally about situations which could compromise patient safety. ***Scott v. Corizon Health***, 2014 WL 1877431 (D. Nevada, May 9, 2014).

## Absent On A Major Holiday: Court Turns Down Nurse's Racial Bias Lawsuit.

The hospital had a specific section in its employee attendance policy to address the special problem of insuring sufficient nurse staffing on major holidays.

The policy also attempted to see that the burden of working on major holidays would be shared fairly among the hospital's nurses.

In a nutshell, while a doctor's note was not usually required after a nurse called in sick, it was required after a nurse called in sick on a major holiday.

No doctor's note meant the nurse was guilty of an unexcused absence. Repeated unexcused absences could lead up to grounds for a nurse's termination.

A minority nurse did not have a doctor's note for calling in sick on Christmas. When added to her history of attendance problems it resulted in firing.

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***A minority employee who sues for discrimination must show that at least one non-minority who was similarly situated was disciplined less harshly for essentially the same offense.***

UNITED STATES DISTRICT COURT  
ALABAMA  
April 30, 2014

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The US District Court for the Northern District of Alabama dismissed the nurse's race discrimination case.

The minority nurse pointed to a non-minority nurse with history of attendance problems virtually identical to hers who was not fired after she failed to produce a doctor's note after calling in sick.

However, according to the Court, the hospital was justified in treating it as a more serious offense for a nurse, in this case a minority, to call in sick on Christmas with no supporting doctor's note. ***Dial v. Noland Health***, 2014 WL 1765007 (N.D. Ala., April 30, 2014).

## Disruptive Conduct: Court Turns Down Aide's Racial Bias Suit.

A verbal confrontation occurred in a nursing home between an African-American nurses aide and a Caucasian nurse, after the nurse allegedly snatched a pen from the aide's hand.

A nursing supervisor heard the commotion, hurried to the scene and told the two to lower their voices.

The minority aide turned her back on her supervisor and walked away. She was suspended for three days for disruptive conduct and insubordination.

No disciplinary action was taken against the non-minority nurse.

After three days, during which time the facility conducted a full investigation of the incident, the minority aide was allowed to return to work and was later paid for the time she was off.

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***There may be suspicions of discrimination here, given that a minority was disciplined more harshly than a non-minority.***

***However, there is no evidence that the facility acted with a discriminatory intent or that race was a factor.***

UNITED STATES COURT OF APPEALS  
SEVENTH CIRCUIT  
May 8, 2014

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The US Court of Appeals for the Seventh Circuit (Indiana) dismissed the aide's race discrimination case.

One employee walked away and ignored a supervisor while being verbally reprimanded; the other did not. If the two employees were treated differently after the incident, that difference cannot be attributed to racial bias, the Court said.

Although the Court must always be suspicious when a minority is treated differently than a non-minority, here that different treatment was not a racial issue. ***Morris v. American Senior***, \_\_ Fed. Appx. \_\_, 2014 WL 1817024 (7th Cir., May 8, 2014).