

First Amendment: Nurse's Rights Were Not Violated.

A registered nurse was reassigned within the surgery department after an incident in which she was struck on the pant leg of her surgical scrubs by a specimen of pericardium tissue tossed in her general direction by one of the surgeons working in the operating room.

Her reassignment was triggered when the hospital learned that she had filed an official notice of claim form with the local city government risk-management office indicating her intent to seek damages from the city-owned hospital and the surgeon.

The US Court of Appeals for the Tenth Circuit ruled the nurse's right to Freedom of Speech under the First Amendment was not violated by her reassignment.

Healthcare workers are protected from employer reprisals when they speak out publicly on subjects of public concern, but not when they express their own personal grievances over situations which are personal to their own individual working environments, this being a case of the latter rather than the former in the Court's view.

There was also no sexual innuendo in the incident with the surgeon to support allegations of sexual harassment, the Court said. **Morris v. City of Colorado Springs**, ___ F. 3d ___, 2012 WL 130672 (10th Cir., January 18, 2012).

Whistleblower: Nurse's Retaliation Case Allowed To Go Forward.

The Whistleblower Protection Statute provides legal protection to an employee who refuses to participate in or remain silent about illegal activity and is then terminated from employment solely for the employee's refusal to participate in or remain silent about the illegal activity.

The employee must be able to identify the specific law, regulation or statute that makes the activity in question illegal or be able to point to a specific public policy that has been articulated by the courts' common-law decisions.

The nurse alleged in general terms that racial discrimination was a factor in assigning priority and determining waiting times for patients, but she has to identify in her lawsuit the specific statute or regulation that makes that illegal.

COURT OF APPEALS OF TENNESSEE
January 17, 2012

An African-American registered nurse working as a triage nurse in the hospital's emergency department began to complain to her supervisors about a pattern of behavior she perceived by her Caucasian E.R. nurse co-workers of preferentially moving Caucasian patients ahead of African-American patients with comparable or more serious acuity levels to be seen more quickly by the physician.

The situation reached the boiling point when the nurse's own sister came to the E.R. Later that night the nurse could not find her sister as she had apparently left without treatment. While voicing her deep concerns to the supervisors on duty the nurse was forcibly removed by hospital security. When she got home she called a state agency complaint hotline number.

Several days later she was suspended and then terminated for alleged accusatory and confrontational behavior and for use of derogatory and profane language toward other members of the hospital staff regarding her sister's treatment.

The nurse filed suit against the hospital claiming protection under the state's whistleblower statute, known in Tennessee as the Public Protection Act.

The Court of Appeals of Tennessee agreed with the lower court that her lawsuit did not contain the technical requirements for a lawsuit under the statute. The Court, however, effectively breathed new life into her case by ruling her case should not have been dismissed without giving her lawyers the chance to redraft the lawsuit as needed.

Quinn-Glover v. Regional Med. Ctr., 2012 WL 120209 (Tenn. App., January 17, 2012).

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