CMS Inspections: Nursing Home Not Able To Prove Selective Religious Bias.

A nursing facility associated with the Jewish religion but open to persons of all faiths was cited for patient-care deficiencies and assessed a substantial civil monetary penalty.

In its appeal the facility pointed to the fact that one of the survey inspectors declined an invitation to visit the facility on a Saturday to verify that the facility itself was not discriminating, that is, that all residents regardless of their religions were allowed to participate in the Kiddush meal, stating that she was a Christian and would not feel comfortable at the Kiddush even if it was truly non-denominational.

That incident was offered as proof of an anti-Semitic bias behind the multiple deficiencies for which the facility was written up.

Selective enforcement based on discriminatory criteria can be raised as a defense to a deficiency citation, if the facility was treated differently than others and the differential treatment was based on an unjustifiable standard such as race or religion or some other arbitrary factor.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
March 14, 2012

The US Court of Appeals for the Fourth Circuit agreed with the general premise behind the facility's appeal that selective enforcement on the basis of discriminatory bias can be valid a defense to a deficiency citation.

However, in this case the evidence was not strong enough to prove that the survey process was tainted by bias, the Court ruled. **Jewish Home v. CMS, 2012 WL 834129 (3rd Cir., March 14, 2012).**

Religious Bias: Nurse Educator's Discrimination Case Dismissed.

A nurse educator had been employed for a number of years at a hospital-based nursing school before she began to experience incidents which she related to discrimination against her on the basis of her Jewish background.

Someone put a handwritten note in her mailbox imploring her to accept Jesus Christ as her savior to avoid eternal damnation. A co-worker was in the habit of playing Christian music on the radio within earshot of her office. The facility sponsored gatherings for Christmas rather than "the holidays" as she preferred. Christian prayers were said at graduation dinners. Spring break was timed to coincide with Easter rather than Passover.

Her complaints to management about these issues were generally ignored.

The nurse educator was given an unflattering performance review and a personal improvement plan by a Christian supervisor.

To sue for a hostile religious environment the employee must show intentional harassment in the form of intimidation, ridicule and insult so severe and pervasive that it alters the conditions of the victim's employment.

Offhand comments and isolated incidents are usually not sufficient.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
March 14, 2012

The US District Court for the Eastern District of Pennsylvania ruled the Christian atmosphere at the facility did not add up to a hostile religious environment. Other faculty members, Christians, also got unfavorable reviews. **Nott v. Reading Hosp., 2012 WL 848245 (E.D. Pa., March 14, 2012).**

Narcotics: Nurses' Testimony Convicts Patient.

An unresponsive patient was brought in to the hospital's E.R. by a police officer after the department received a call about a person who was lying in the street. The man was still unresponsive when the officer left the hospital.

When he awoke the patient took a baggie from the waistband of his pants and asked the E.R. nurse to hold his dope for him.

She asked him if he had been using it. He said he did not use crack cocaine, he only sold it.

The nurse gave the baggie to her supervisor. The two of them counted the white nuggets, put them in a biohazard bag and called the police back to the hospital.

COURT OF APPEALS OF TEXAS
February 16, 2012

The Court of Appeals of Texas upheld the patient's conviction for possession of a controlled substance based on the E.R. nurses' testimony and the incriminating evidence the patient gave to them.

The E.R. nurses acted appropriately in all respects, the Court said. Given the patient's recent history and current condition, it was highly relevant to his care to determine what substance or substances he had been using and it was a legitimate medical question to ask him whether he had been using what appeared to be crack cocaine.

It was irrelevant, the Court said, that the patient's statement to the E.R. nurse that he sold crack cocaine was a confession to the crime of possession with intent to sell while he was only charged with simple possession.

The nurses had no obligation to hold his contraband for him as the patient requested and it was the right thing to summon the police to return to the hospital. **Mills v. State, 2012 WL 524450 (Tex. App., February 16, 2012).**